AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

THE NATIONAL ARCHIVES OF THE UNITED STATES 1934

FEDERAL REGISTER

VOLUME 20 NUMBER 196

Washington, Friday, October 7, 1955

TITLE 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION, SAMPLING AND CERTIFICATION)

MISCELLANEOUS AMENDMENTS

The amendment to the regulations governing the inspection, sampling and certification of cottonseed sold or offered for sale for crushing purposes (7 CFR Part 61), hereinafter set forth, is hereby promulgated to be effective upon publication in the FEDERAL REGISTER, pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.).

The primary purpose of the amendment is to delete obsolete provisions and to clarify the provisions relating to the handling of official samples.

The Department finds that it is impracticable, unnecessary, and contrary to the public interest to issue a notice of proposed rule making on this amendment or to postpone the effective date of the amendment until thirty (30) days after publication in the FEDERAL REGISTER for the following reasons: (1) The changes are in the nature of clarifying procedural amendments or deletions of obsolete provisions; and (2) the changes require no preparation on the part of users of the service.

The amendment is as follows:

1. Change paragraph (a) of § 61.2 to read as follows:

(a) *The act.* The applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) or any other act of Congress conferring like authority.

2. Delete the last sentence in paragraph (b) of § 61.16 and substitute therefor the following: "In any case where the original sample is lost or destroyed before analysis, the duplicate thereof retained by the licensed cottonseed sampler as provided in § 61.34 shall become the official sample. Each licensed chemist shall retain for at least two weeks a portion of each official sample first analyzed; and in any case where a review is requested under § 61.8 such retained portion shall be considered an official sample for purposes of review analysis."

3. Delete paragraph (c) of § 61.25.

(Sec. 205, 60 Stat. 1090; 7 U. S. C. 1624)

Done at Washington, D. C., this 4th day of October 1955.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F. R. Doc. 55-8140; Filed, Oct. 6, 1955; 8:50 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Grapefruit Reg. 104]

PART 955—GRAPEFRUIT GROWN IN ARIZONA; IN IMPERIAL COUNTY, CALIFORNIA; AND IN THAT PART OF RIVERSIDE COUNTY, CALIFORNIA, SITUATED SOUTH AND EAST OF THE SAN GORGONIO PASS

LIMITATION OF SHIPMENTS

§ 955.365 *Grapefruit Regulation 104*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 55, as amended (7 CFR Part 955), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of the San Gorgonio Pass, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the Administrative Committee (established under the aforesaid amended marketing agreement and order), and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice,

(Continued on next page)

CONTENTS

	Page
Agricultural Marketing Service	
Notices:	
Potatoes, fresh, Irish; Diversion Payment Program WDM 3a	7516
Proposed rule making:	
Milk in Texas Panhandle marketing area; handling of	7492
Plums, frozen; U. S. standards for grades	7490
Rules and regulations:	
Cottonseed sold or offered for sale for crushing purposes; miscellaneous amendments	7467
Grapefruit grown in Arizona; in Imperial County, Calif., situated south and east of San Gorgonio Pass; limitation of shipments	7467
Agriculture Department	
See Agricultural Marketing Service; Commodity Credit Corporation.	
Army Department	
Notices:	
Organization and functions; description of Central and Field Agencies	7516
Civil Aeronautics Administration	
Rules and regulations:	
Standard instrument approach procedures; alterations	7471
Civil Aeronautics Board	
Notices:	
Northwest Airlines, Inc.; Pittsburgh restriction; prehearing conference	7517
Civil Service Commission	
Rules and regulations:	
Exceptions from the competitive service; Post Office Department	7483
Commerce Department	
See Civil Aeronautics Administration.	
Commodity Credit Corporation	
Rules and regulations:	
Corn Reseal Loan Program, 1954 crop; availability; time	7483
Cotton Loan Program, 1955; revision of bagging requirements	7483
Defense Department	
See Army Department.	

FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

CFR SUPPLEMENTS
(For use during 1955)

The following Supplements are now available:

Title 32: Parts 400–699 ($5.75)
Parts 800–1099 ($5.00)
Part 1100 to end ($4.50)
Title 43 (Revised, 1954) ($6.00)

Previously announced: Title 3, 1954 Supp. ($1.75); Titles 4–5 ($0.70); Title 6 ($2.00); Title 7: Parts 1–209 ($0.60); Parts 210–899 ($2.50); Part 900 to end ($2.25); Title 8 ($0.45); Title 9 ($0.65); Titles 10–13 ($0.50); Title 14: Parts 1–399 ($2.25); Part 400 to end ($0.65); Title 15 ($1.25); Title 16 ($1.25); Title 17 ($0.55); Title 18 ($0.50); Title 19 ($0.40); Title 20 ($0.75); Title 21 ($1.75); Titles 22–23 ($0.75); Title 24 ($0.75); Title 25 ($0.50); Title 26 (1954) ($2.50); Title 26: Parts 1–79 ($0.35); Parts 80–169 ($0.50); Parts 170–182 ($0.50); Parts 183–299 ($0.30); Part 300 to end and Title 27 ($1.25); Titles 28–29 ($1.25); Titles 30–31 ($1.25); Title 32: Parts 1–399 ($4.50); Parts 700–799 ($3.75); Title 32A, Revised December 31, 1954 ($1.50); Title 33 ($1.50); Titles 35–37 ($0.75); Title 38 ($2.00); Title 39 ($0.75); Titles 40–42 ($0.50); Titles 44–45 ($0.75); Title 46: Parts 1–145 ($0.40); Part 146 to end ($1.25); Titles 47–48 ($1.25); Title 49: Parts 1–70 ($0.60); Parts 71–90 ($0.75); Parts 91–164 ($0.50); Part 165 to end ($0.60); Title 50 ($0.55)

Order from Superintendent of Documents, Government Printing Office, Washington 25, D. C.

CONTENTS—Continued

Farm Credit Administration Page
Rules and regulations:
- Production Credit Associations; payment of dividends 7483

Federal Power Commission
Notices:
- Hearings, etc.:
  - Alabama-Tennessee Natural Gas Co. et al 7517
  - Gregg, A. W 7517
  - Hunt, Lamar, et al 7517
  - Kahle, Paul E 7517
  - Pacific Power & Light Co 7517
  - Pan American Production Co. and Phillips Petroleum Co 7517
  - St. Joseph Light & Power Co 7517
  - Texas Eastern Transmission Corp 7517

Federal Trade Commission
Rules and regulations:
- Cease and desist order; Lilli Ann Corp. et al 7469

Food and Drug Administration
Proposed rule making:
- Enforcement of Federal Food, Drug, and Cosmetic Act; new drugs; extension of time for filing written comments 7515

Rules and regulations:
- Certification of chlortetracycline (or tetracycline) and chlortetracycline-(or tetracycline-) containing drugs; chlortetracycline oinment 7483

Health, Education, and Welfare Department
See Food and Drug Administration.

Interior Department
See Land Management Bureau.

Internal Revenue Service
Proposed rule making:
- Income tax; taxable years beginning after Dec. 31, 1953; certain death benefits specifically excluded from gross income 7484

Interstate Commerce Commission
Notices:
- Fourth section applications for relief 7518

Land Management Bureau
Notices:
- Hearings Officer; delegation of authority to act for Director 7516

Securities and Exchange Commission
Notices:
- Hearings, etc.:
  - Secured Underwriters, Inc 7518
  - Wisconsin Southern Gas Co., Inc 7518

Tariff Commission
Notices:
- Pipe, Cast iron soil; investigation and hearing 7518

Treasury Department
See Internal Revenue Service.

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

Title 5 Page
Chapter I:
- Part 6 7483

Title 6
Chapter I:
- Part 50 7483

Chapter IV:
- Part 421 7483
- Part 427 7483

Title 7
Chapter I:
- Part 52 (proposed) 7490
- Part 61 7467

Chapter IX:
- Part 911 (proposed) 7492
- Part 955 7467

Title 14
Chapter II:
- Part 609 7471

Title 16
Chapter I:
- Part 13 7469

Title 21
Chapter I:
- Part 1 (proposed) 7515
- Part 130 (proposed) 7515
- Part 146c 7483

Title 26 (1954)
Chapter I:
- Part 1 (proposed) 7484

engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date. The Administrative Committee held an open meeting on September 29, 1955, to consider recommendations for a regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the regulation recommended by the committee has been disseminated to shippers of grapefruit, grown as aforesaid, and this section, including the effective time thereof, is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this section effective on the date hereinafter set forth so as to provide for the regulation of the handling of grapefruit at the start of this marketing season; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) *Order*. (1) During the period beginning at 12:01 a. m., P. s. t., October 9, 1955, and ending at 12:01 a. m., P. s. t., December 18, 1955, no handler shall ship:

(i) Any grapefruit of any variety grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of the San Gorgonio Pass unless such grapefruit are at least fairly well colored, and otherwise grade at least U. S. No. 2; or

(ii) From the State of California or the State of Arizona (*a*) to any point outside thereof in the United States, any grapefruit, grown as aforesaid, which are of a size smaller than $3\frac{11}{16}$ inches in diameter, or (*b*) to any point in Canada, any grapefruit, grown as aforesaid, which are of a size smaller than $3\frac{9}{16}$ inches in diameter ("diameter" in each case to be measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit), except that a tolerance of 5 percent, by count, of grapefruit smaller than the foregoing minimum sizes shall be permitted which tolerance shall be applied in accordance with the provisions for the application of tolerance, specified in the revised United States Standards for Grapefruit (California and Arizona), §§ 51.925 to 51.955 of this title: *Provided*, That, in determining the percentage of grapefruit in any lot which are smaller than $3\frac{11}{16}$ inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size $4\frac{2}{16}$ inches in diameter and smaller; and in determining the percentage of grapefruit in any lot which are smaller than $3\frac{9}{16}$ inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size $3\frac{13}{16}$ inches in diameter and smaller.

(2) As used in this section, "handler," "variety," "grapefruit," and "ship" shall have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 2" and "fairly well colored" shall each have the same meaning as when used in the revised United States Standards for Grapefruit (California and Arizona), §§ 51.925 to 51.955 of this title.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: October 4, 1955.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 55-8137; Filed, Oct. 6, 1955; 8:49 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6336]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

LILLI ANN CORP. ET AL.

Subpart—*Misbranding or mislabeling:* § 13.1190 *Composition: Wool Products Labeling Act;* § 13.1325 *Source or origin:* Maker or seller, etc.: *Wool Products Labeling Act.* Subpart—*Misrepresenting oneself and goods*—GOODS: § 13.1590 *Composition.* Subpart—*Neglecting, unfairly or deceptively, to make material disclosure:* § 13.1845 *Composition:* Wool Products Labeling Act; § 13.1900 *Source or origin:* Wool Products Labeling Act. I. In connection with the importation into the United States or the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fabrics or ladies' coats or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said act, misbranding or misrepresenting such products by: 1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein; 2. failing to securely affix to or place on each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner: (a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter; (c) the name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939; 3. failing to set forth on fiber content labels or tags the common generic names of the fiber contents in respondents' wool products; 4. stamping, tagging, labeling, or otherwise identifying such products as containing the hair or fleece of the Cashmere goat without setting out in a clear and conspicuous manner on each such stamp, tag, label, or other means of identification, the percentage of such Cashmere content therein; and 5. failing to stamp, tag, label, or otherwise identify such products in terms of the English language; and, II. in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fabrics, ladies' coats, or other products; I. Using the word "Cashmere" or any simulation thereof, either alone or in conjunction with other words, to designate, describe, or refer to any product which is not composed entirely of the hair of the Cashmere goat; and 2. representing in any manner that said products contain a greater percentage of cashmere than is the fact; prohibited, subject to the provision, however, as respects prohibition "5" of part "I" with regard to failure to stamp, tag, label, or otherwise identify products concerned in terms of the English language, that in the event such stamps, tags, labels, or other means of identification contain any of the required information in a language other than English, all of the required information shall appear both in such other language and in the English language; that the provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939, and that nothing contained in the order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder; and that, as respects the prohibited use of the word "Cashmere," etc., to designate, etc., any product not composed entirely of the hair of the Cashmere goat, as set forth in "1" of part "II," that in the case of any product composed in part of the hair of the Cashmere goat and in part of other fibers or materials, such term may be used as descriptive of the Cashmere content if there are used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully designating such other constituent fibers or materials.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U. S. C. 45, 68-68c) [Cease and desist order, Lilli Ann Corp. et al., San Francisco, Calif., Docket 6336, Sept. 22, 1955.]

In the Matter of Lilli Ann Corp., a Corporation; and Soufflet-America, Inc., a Corporation; and Adolph P. Schuman, Individually and as an Officer of Said Corporations

This proceeding was heard by John Lewis, hearing examiner, upon the complaint of the Commission which charged respondents Lilli Ann Corp., Soufflet-America, Inc., and Adolph P. Schuman, individually and as an officer thereof, with having violated the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and the Federal Trade Commission Act, through the misbranding of certain wool products, including certain fabrics and ladies' coats, through the practice, among others, of labeling such coats made of sheep wool, rabbit hair, and cashmere as "Cashmere of France—Woven in Paris for Lilli Ann", mislabeling certain fabrics as to their content, and using, in certain instances, information on labels in French without an accompanying English translation, and with violation of the Federal Trade Commission Act through falsely representing in invoices, orders, and confirmations of orders the content of piece goods; and upon a stipulation which was entered into by respondents with counsel supporting the complaint, provided for the entry of a consent order disposing of all the issues in the proceeding, was signed by counsel supporting the complaint, counsel for respondents, and respondents, was approved by the Director of the Commission's Bureau of Litigation, and was submitted to said hearing examiner, theretofore duly designated, and was followed by a statement by counsel for respondents, for the record, by way of explaining the circumstances surrounding the particular violations charged and in extenuation thereof, received with the understanding that said remarks did not constitute an admission by respondents concerning any of the substantive allegations of the complaint, and that they did not impair the effectiveness of the stipulation submitted to the hearing examiner, including the order therein provided for.

Said stipulation set forth that respondents admitted all the jurisdictional allegations of the complaint and agreed that the record in the matter might be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; that all parties expressly waived a hearing before the hearing examiner or the Commission, and all further and other procedure to which the respondents might be entitled under the Federal Trade Commission Act or the rules of practice of the Commission; that respondents also agreed that the order to cease and desist issued in accordance with said stipulation should have the same force and effect as if made after a full hearing, and specifically waived any and all right, power, or privilege to challenge or contest the validity of said order; and that the complaint in the matter might be used in construing the terms of the order provided for in said stipulation, and that the signing of said stipulation was for settlement purposes only and did not constitute an admission by respondents that they had violated the law as alleged in the complaint.

Thereafter the aforesaid proceeding having come on for final consideration by said hearing examiner on the complaint and the aforesaid stipulation for consent order, said hearing examiner made his initial decision in which he set forth the aforesaid matters, and his conclusion, it appearing that the order provided for in said stipulation conformed in all respects to the proposed order in the "notice" portion of the complaint, that said stipulation provided for an appropriate disposition of the proceeding; his acceptance thereof, which he ordered filed upon becoming part of the Commission's decision in accordance with §§ 3.21 and 3.25 of the Commission's rules of practice; and in which he accordingly made certain jurisdictional findings, including findings as to said respondents, and findings that the Commission had jurisdiction of the subject matter of the proceeding and of the aforesaid respondents, that the complaint stated a cause of action against them under the Wool Products Labeling Act of 1939 and the Federal Trade Commission Act, and that the proceeding was in the interest of the public; and in which he issued order to cease and desist.

Thereafter said initial decision, including said order, as announced and decreed by "Decision of the Commission and Order to File Report of Compliance", dated September 9, 1955, became, on September 22, 1955, pursuant to § 3.21 of the Commission's rules of practice, the decision of the Commission.

Said order to cease and desist is as follows:

It is ordered, That the respondents Lilli Ann Corp., a corporation; Soufflet-America, Inc., a corporation; and the officers of each of said corporations, and Adolph P. Schuman, individually and as an officer of each of said corporations; and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the importation into the United States or the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fabrics or ladies' coats or other "wool products," as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in said Act, do forthwith cease and desist from misbranding or misrepresenting such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

3. Failing to set forth on fiber content labels or tags the common generic names of the fiber contents in their wool products;

4. Stamping, tagging, labeling, or otherwise identifying such products as containing the hair or fleece of the Cashmere goat without setting out in a clear and conspicuous manner on each such stamp, tag, label, or other means of identification, the percentage of such Cashmere content therein;

5. Failing to stamp, tag, label or otherwise identify such products in terms of the English language; provided that in the event such stamps, tags, labels, or other means of identification contain any of the required information in a language other than English, all of the required information shall appear both in such other language and in the English language.

Provided, That the foregoing provisions concerning misbranding shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939: *And provided further*, That nothing contained in this order shall be construed as limiting any applicable provisions of said act or the rules and regulations promulgated thereunder.

It is further ordered, That the respondents Lilli Ann Corp., a corporation, Soufflet-America, Inc., a corporation, and the officers of each of said corporations, and Adolph P. Schuman, individually and as an officer of each of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of fabrics, ladies' coats, or other products, do forthwith cease and desist from directly or indirectly:

1. Using the word "Cashmere" or any simulation thereof, either alone or in conjunction with other words, to designate, describe, or refer to any product which is not composed entirely of the hair of the Cashmere goat: *Provided, however*, That in the case of any product composed in part of the hair of the Cashmere goat and in part of other fibers or materials, such term may be used as descriptive of the Cashmere content if there are used in immediate connection or conjunction therewith, letters of at least equal size and conspicuousness, words truthfully designating such other constituent fibers or materials.

2. Representing in any manner that said products contain a greater percentage of Cashmere than is the fact.

By said "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 9, 1955.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 55-8135; Filed, Oct. 6, 1955; 8:49 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 163]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedure alterations appearing hereinafter are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

Part 609 is amended as follows:

NOTE: Where the general classification (LFR, VAR, ADF, ILS, GCA, or VOR), location, and procedure number (if any) of any procedure in the amendments which follow, are identical with an existing procedure, that procedure is to be substituted for the existing one, as of the effective date given, to the extent that it differs from the existing procedure; where a procedure is canceled, the existing procedure is revoked; new procedures are to be placed in appropriate alphabetical sequence within the section amended.

1. The low frequency range procedures prescribed in § 609.6 are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.

If an LFR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft		
								75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11
ANNETTE, ALASKA. Annette Airport, 119'. SBRAZ-VPDTX. ANN. Procedure No. 1. Effective date: October 29, 1955. Amendment No. 8. Supersedes No. 7, dated May 19, 1955. Major changes: (1) Minimums revised upward for circling to agree with criteria and missed approach; (2) straight-in minimum omitted, not applicable.	----------	----------	----------	W side of S course:** 141° outbound. 321° inbound. 1,500' within 10 miles.	800	123—1.8	2 engines or less			Within 0 mile after passing Annette LFR turn left, climb to 2,800' on S course of Annette LFR within 25 miles. *Runway 2: T-d 600-1; T-n not authorized. Runway 2-20 unlighted. Turn left immediately after take-off Runway 2. CAUTION: Mountainous terrain to 2,900' 3½ miles NE; 3,600' 6 miles NE; 1,000' contour within 2 miles of airport N through E. **Nonstandard procedure turn for more favorable terrain.
							T-dn	*300-1	*300-1	
							C-dn	700-1½	700-2	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	----------	*200-½	
							C-dn	----------	700-2	
							A-dn	----------	800-2	
BATTLE CREEK, MICH. Kellogg Field, 941'. SBMLZ-VDT. BTL-LFR. Procedure No. 1. Effective date: October 29, 1955. Amendment No. 8. Supersedes No. 7, dated August 15, 1953. Major changes: (1) Deletes MEA all directions column 2; (2) column 5 distance revised in accordance with policy; (3) column 7 distance revised; (4) new format on minimums.	----------	----------	----------	E side of S course: 183° outbound. 003° inbound. 2,100' within 10 miles.	1,600	003—3.3	2 engines or less			Within 3.3 miles, climb to 2,200' on N course (003°) within 10 miles.
							T-dn	300-1	300-1	
							C-dn	400-1	500-1	
							S-dn 36	400-1	400-1	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	----------	200-½	
							C-dn	----------	500-1½	
							S-dn 36	----------	400-1	
							A-dn	----------	800-2	

LFR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft		
								75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11
EUGENE, OREG. Mahlon Sweet, 365′. SBRAZ-DTV EUG. Procedure No. 1. Amendment No. 7. Effective: October 29, 1955. Supersedes Amendment 6, dated June 4, 1954. Major changes: New format; minor course and distance corrections; add EUG-VOR; reduce altitude from cottage Grove FM; reduce altitude on procedure turn; reduce altitude on missed approach; lower take-off minimum on 4-engine airplanes.	Cottage Grove FM EUG-VOR	330—29.0 263—0.5	3,700 2,500	W side of N course: 356° outbound. 176° inbound. 2,500′ within 10 miles. Not authorized beyond 10 miles.	1,500	150—4.5	2 engines or less			Within 4.5 miles, turn right and climb to 2,000′ on N course of EUG-LFR within 25 miles.
							T-dn	300-1	300-1	
							C-dn	500-1	500-1½	
							S-dn Runway 16	400-1	400-1	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	-----------	200-½	
							C-dn	-----------	600-1½	
							S-dn Runway 16	-----------	400-1	
							A-dn	-----------	800-2	
GRAND ISLAND, NEBR. Grand Island, 1,846′. SBMRLZ-VDT, GRI. Procedure No. 1. Effective date: October 29, 1955. Amendment No. 9. Supersedes No. 8, dated November 25, 1953. Major changes: (1) Courses and distances revised to conform with criteria and C&G, columns 3, 5, 7, and 11; (2) column 6 altitude lowered to conform with criteria; (3) new format used on minimums; (4) alternate minimums lowered to comply with policy.	Grand Island VOR	345—1.0	3,100	W side of N course: 345° outbound. 165° inbound. 3,100° within 10 miles.	2,400	165—1.5	2 engines or less			Within 1.5 miles, climb to 3,200′ on S course within 25 miles.
							T-dn	300-1	300-1	
							C-dn	400-1	500-1	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	-----------	200-½	
							C-dn	-----------	500-1½	
							A-dn	-----------	800-2	
GRAND RAPIDS, MICH. Kent County Airport, 692′. SBMRLZ-VDT-GRR. Procedure No. 1. Effective date: October 29, 1955. Amendment No. 8. Supersedes No. 7 dated December 20, 1953. Major changes: (1) Columns 3, 4, 5 and 6 revised to conform with policy; (2) format revised on minimums; (3) item II revised.	Alaska FM (final)	303—10.0	1,500	E side of SE course: 123° outbound. 303° inbound. 2,000′ within 10 miles.	1,500	303—2.0	2 engines or less			Within 2 miles, climb to 1,900′ on NW course GRR-LFR within 25 miles. CAUTION: 907′ mean sea level stack located 0.5 mile WSW airport. 930′ mean sea level tower located 2 miles S of airport. AIR CARRIER NOTE:* 200-½ authorized on runways 18L and 36R only.
							T-dn	300-1	300-1	
							C-d	500-1	500-1	
							C-n	500-1½	500-1½	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	-----------	*300-1	
							C-dn	-----------	500-1½	
							A-dn	-----------	800-2	

LFR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft		
								75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11
LONG BEACH, CALIF. Municipal, 56′. SBMRLZ-DTV LGB. Procedure No. 1. Amendment No. 9. Effective date: October 29, 1955. Supersedes Amendment No. 8, dated July 2, 1955. Major changes: Raise missed approach altitude at San Pedro Intersection 2,500′. S course LAX LFR realined.	La Habra FM	208—15.0	1,500	W side of SE course: 118° outbound. 298° inbound. 1,500′ within 10 miles. Beyond 10 miles not authorized.	1,000	298—3.9	2 engines or less			Within 3.9 miles, climb to 800′ on NW course, then turn left to 250° continuing climb to intersection S course of LAX LFR and proceed to San Pedro Intersection at minimum of 2,500′. CAUTION: 500′ hill with oil derricks 1 mile S of airport. *300-1 required for take-off runways 16, 16R, 25L, 34R. Standard clearance not provided over obstructions for circling minimums.
	Huntington Beach FM (final).	298—11.0	1,000				T-dn	300-1	300-1	
	Long Beach VOR	237— 2.5	1,500				C-dn	500-1	600-1	
							S-dn, Runway 30	500-1	500-1	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	------------	*200-½	
							C-dn	------------	600-2	
							S-dn, Runway 30	------------	500-1	
							A-dn	------------	800-2	
REDMOND, OREG. Roberts Field, 3,077′. SBRAZ DTV RDM. Procedure No. 1. Amendment No. 5. Effective date: October 29, 1955. Supersedes Amendment 4, dated July 12, 1950. Major changes: New format; add RDM-VOR, limit procedure turn to 10 miles; change shuttle to SE course.	RDM-VOR	285—4.5	6,000	N side of NW course: 282° outbound. 102° inbound. 6,000′ within 10 miles. Not authorized beyond 10 miles. Procedure: Turn N for more favorable terrain.	4,600	102—4.3	2 engines or less			Within 4.3 miles, turn right and climb to 7,000′ on S course of RDM-LFR within 15 miles. SHUTTLE: To 7,000′ on SE course within 10 miles of RDM-LFR.
							T-dn	300-1	300-1	
							C-d	700-1	700-1	
							C-n	700-1½	700-1½	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	------------	200-½	
							C-dn	------------	700-1½	
							A-dn	------------	800-2	
WASHINGTON, D. C. National, 16′. SBRA-DTXV DCA. Procedure No. 1. Amendment No. 6. Effective date: October 29, 1955. Supersedes Amendment 5, dated June 20, 1954. Major change: Procedure turn distance limited to 10 miles.	Radar transition altitudes: 2,500′ in the E, W, and S quadrants of the Washington DFR and 1,800′ in the N quadrant within 25 miles of the Washington National Airport; 2,500′ in all quadrants within 40 miles exclusive of danger and prohibited areas. Radar fixes may be substituted for all fixes shown. (Radar distances shown in nautical miles.)			E side of SW course: 212° outbound. 032° inbound. 1,500 within 10 miles.	1,000	001—5.3	2 engines or less			Within 5.3 miles, make a left climbing turn as soon as practicable, climb to 1,800′ (or to a higher altitude when requested by ATC) on NW course to Herndon Intersection. *300-1 required for runways 9 and 27. These procedures and airport minimums do not provide standard clearance over the following obstructions: 422′ monument 1.7 miles W of final approach course, 193′ stacks 1.5 miles S of airport, and 596′ monument 1.8 miles N of airport. AIR CARRIER NOTES: No sliding scale or reduction in visibility authorized for take-off on runways 9 and 27.
							T-dn	300-1	300-1	
							C-dn	600-1	600-1	
							S-dn 3	500-1	500-1	
							33, 36	400-1	400-1	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	------------	*200-½	
							C-dn	------------	600-1½	
							S-dn 3	------------	500-1	
							33, 36	------------	400-1	
							A-dn	------------	800-2	

2. The automatic direction finding procedures prescribed in § 609.8 are amended to read in part:

ADF Standard Instrument Approach Procedure

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.

If an ADF instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft		
								75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11
WASHINGTON, D. C. National, 16'. SBRA-DTXV DCA. Procedure No. 2. Amendment No. 5. Effective date: October 29, 1955. Supersedes amendment 4, dated June 21, 1954. Major change: Procedure turn distance limited to 10 miles.	Radar transition altitudes; 1,500' in the E, W and S quadrants of the Washington LFR and 1,800' in the N quadrant within 25 miles of the Washington National Airport; 2,500' in all quadrants within 40 miles exclusive of danger and prohibited areas. Radar fixes may be substituted for all fixes shown. (Radar distances shown in nautical miles.)			W side of course:* 181° outbound. 001° inbound. 1,400' within in 10 miles.	1,000	001—5.3	2 engines or less			Within 5.3 miles, make a left climbing turn as soon as practicable, climb to 1,800' (or higher altitude when requested by ATC) on course of 320° to Herndon Intersection. *Nonstandard procedure turn to avoid traffic at Andrews AFB. **300-1 required for Runways 9 and 27. These procedures and airport minimums do not provide standard clearance over the following obstructions: 422' monument 1.7 miles W of final approach course, 193' stacks 1.5 miles S of airport, 596' monument approximately 1.8 miles N of airport. Air Carrier Notes: No sliding scale or reduction in visibility authorized for takeoff on Runways 9 and 27.
							T-dn	300-1	300-1	
							C-dn	600-1	600-1	
							S-dn 3	500-1	500-1	
							33, 36	400-1	400-1	
							A-dn	800-2	800-2	
							More than 2 engines			
							T-dn	------------	**200-½	
							C-dn	------------	600-1½	
							S-dn 3	------------	500-1	
							33, 36	------------	400-1	
							A-dn	------------	800-2	

3. The very high frequency omnirange procedures prescribed in § 609.9 (a) are amended to read in part:

VOR Standard Instrument Approach Procedure

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.

If a VOR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft		
								75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11
AUSTIN, TEX. Mueller, 631'. BVOR-AUS. Procedure No. 1. Amendment 5. Effective date: October 29, 1955. Supersedes Amendment 4, June 18, 1955. Major changes: Lower procedure turn altitude.	Austin LFR	014—5.0	2,000	W side of course 355° outbound, 175° inbound, 2,000' within 10 miles. Beyond 10 miles not authorized.	AUS-VOR 1,600. AUS-FM or NE course AUS-LFR 1,300.	175—5.6	2 engines or less			Within 5.6 miles turn left, climb to 2,000' on radial 100° within 25 miles. (1) Descent below 1,300' authorized after passing AUS FM or NE course AUS LFR. If AUS FM or NE course of AUS LFR not received, descent below 1,300' not authorized. Caution: Tank 855' mean sea level 1.2 miles W final approach track 2.3 miles NW of airport. *Runways 16R, 34L, 12R and 30L only.
							T-dn	300-1	300-1	
							C-dn	400-1	500-1	
							S-dn 16R	400-1	400-1	
							More than 2 engines			
							T-dn	------------	300-1 *200-½	
							C-dn	------------	500-1½	
							S-dn 16R	------------	400-1	
							All aircraft			
							A-dn	800-2	800-2	

VOR Standard Instrument Approach Procedure—Continued

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums			If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft		
								75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11
EUGENE, OREG. Mahlon Sweet, 365′. BVOR-EUG. Procedure No. 1. Amendment No. 2. Effective date: October 29, 1955. Supersedes Amendment No. 1, Dated June 4, 1954. New format: Add Cottage Grove FM; minor course and distance corrections; lower altitude under column 4; lower altitude on procedure turn; lower altitude on missed approach.	EUG-LFR Cottage Grove, FM Intersection N course EUG-LFR and 338° radial of EUG-VOR.	083—0. 5 332—29. 0 158—1. 6	2, 500 3, 700 2, 500	E side of course:* 338° outbound. 158° inbound. 2,500′ within 10 miles. Not authorized beyond 10 miles.	1, 500	158—4. 4	2 engines or less T-dn C-dn S-dn Runway 16 A-dn More than 2 engines T-dn C-dn S-dn Runway 16 A-dn	 300-1 500-1 400-1 800-2 ------------ ------------ ------------ ------------	 300-1 500-1½ 400-1 800-2 200-½ 600-1½ 400-1 800-2	Within 4.4 miles turn right and climb to 2,000′ on 355° radial within 25 miles of EUG-VOR. *Procedure turn E for more favorable terrain.
GRAND ISLAND, NEBR. Grand Island, 1,846′. BVOR-GRI. Procedure No. 1. Effective date: October 29, 1955. Amendment No. 2. Supersedes 1, dated March 22, 1954. Major changes: (1) Column 5 distance revised to conform with policy; (2) column 6 altitude lowered to conform to criteria; (3) new format on minimums.	Grand Island LFR	165—1. 0	3, 100	W side of course: 349° outbound. 169° inbound. 3,100′ within 10 miles.	2, 400	169—0. 5	2 engines or less T-dn C-dn A-dn More than 2 engines T-dn C-dn A-dn	 300-1 500-1 800-2 ------------ ------------ ------------	 300-1 600-1 800-2 200-½ 600-1½ 800-2	Within 0.5 mile climb to 3,200′ on course of 169° from GRI-VOR within 25 miles.
GREEN BAY, WIS. Austin-Straubel, 694′. BVOR-DTV-GRB. Procedure No. 1. Effective date: October 29, 1955. Amendment No. 2. Supersedes 1, dated July 10, 1954. Major changes: (1) column 5 revised to 10 miles; (2) format revised on minimums; (3) column 11 revised.	------------	------------	------------	W side of course: 324° outbound. 144° inbound. 1,900′ within 10 miles.	1, 400	144—5. 3	2 engines or less T-dn C-dn S-dn 12 A-dn More than 2 engines T-dn C-dn S-dn 12 A-dn	 300-1 400-1 400-1 800-2 ------------ ------------ ------------ ------------	 300-1 500-1 400-1 800-2 200-½ 500-1½ 500-1 800-2	Within 5.3 miles, climb immediately to 2,700′ on R-144 within 25 miles. Caution: Radio tower 1,650′ mean sea level 8 miles SE airport.
REDMOND, OREG. Roberts field, 3,077′. BVOR-RDM. Procedure No. 1. Amendment No. 1. Effective date: Oct. 29, 1955. Supersedes original, dated June 12, 1953. New format: Authorize lower landing minimums when utilizing RDM-LFR; change missed approach to en route radial; change shuttle to the 105° radial.	RDM-LFR (final)*	105—4. 5	6, 000	N side of course: 285° outbound. 105° inbound. 6,000′ within 10 miles. Not authorized beyond 10 miles.	4, 600 *3, 800	On airport	2 engines or less T-dn* C-dn A-dn More than 2 engines T-dn* C-dn A-dn	 300-1 1, 500-1 1, 500-2 ------------ ------------ ------------	 300-1 1, 500-1 1, 500-2 200-½ 1, 500-1½ 1, 500-2	Within 0 mile execute climbing right turn, climb to 7,000′ on the 172° radial within 15 miles of RDM-VOR. *Descent to 3,800′ (final) authorized after passing RDM-LFR. Landing minimums 700-1 day, 700-1½ night when RDM-LFR used for final approach fix. If RDM-LFR not received, maintain 4,600′ to RDM-VOR. Shuttle: To 7,000′ on 105° radial within 10 miles of RDM-VOR.

4. The very high frequency omnirange procedures prescribed in § 609.9 (b) are amended to read in part:

TVOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.

If a TVOR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility: class and identification; Procedure No. (TVOR); effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance from int. runway center line extended and final course to approach end of runway	Ceiling and visibility minimums			If visual contact not established at TVOR, or if landing not accomplished
							Condition	Type aircraft		
								75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11
WASHINGTON, D. C. National, 16′. TVOR-33. Amendment Number 3. Effective date: October 29, 1955. Supersedes Amendment 2, dated June 20, 1954. Major change: Procedure published under Part 609.	Springfield MHW Herndon VOR Andrews LFR Washington LFR Intersection NE course Washington LFR (final). Radar transition altitudes: 1,500′ in the E, W, and S quadrants of the Washington LFR and 1,800′ in the N quadrant within 25 miles of the Washington National Airport; 2,500′ in all quadrants within 40 miles exclusive of danger and prohibited areas. Radar fixes may be substituted for all fixes shown. (Radar distances shown in nautical miles.)	071—12 123—25 327—15 002—6 340—4	1,800 1,800 1,500 1,500 #500	W side of course:* 160° outbound. 340° inbound. 1,600′ within 10 miles of TVOR.	#500	330—0.7	2 engines or less T-dn C-dn S-dn 33 A-dn More than 2 engines T-dn C-dn S-dn 33 A-dn	 300-1 600-1 500-1 800-2 ------------ ------------ ------------ ------------	 300-1 600-1 500-1 800-2 **200-½ 600-1½ 500-1 800-2	Make a left climbing turn, climb to 1,800′ (or a higher altitude when requested by ATC) on course 300° and proceed to Herndon VOR. #Maintain 700′ until after passing Int. NE course Washington LFR. *Procedure turn W to avoid Andrews AFB traffic. **300-1 required for Runways 9 and 27. CAUTION: Circling minimums do not provide standard obstruction clearance over 596′ monument 1.8 miles N of airport. AIR CARRIER NOTES: No sliding scale or reduction in visibility authorized for takeoff on Runways 9 and 27.
WASHINGTON, D. C. National, 16′. TVOR-36. Amendment No. 3. Effective date: October 29, 1955. Supersedes amendment 2, dated June 20, 1954. Major change: Procedure turn distance limited to 10 miles.	Springfield MHW Herndon VOR Andrews LFR Washington LFR Radar transition altitudes: 1,500′ in the E, W, and S quadrants of the Washington LFR and 1,800′ in the N quadrant within 25 miles of the Washington National Airport; 2,500′ in all quadrants within 40 miles exclusive of danger and prohibited areas. Radar fixes may be substituted for all fixes shown. (Radar distances shown in nautical miles.)	071—12 123—25 327—15 002—6	1,800 1,800 1,500 1,500	W side of course: 187° outbound. 007° inbound. 1,400′ within 10 miles of Washington LFR. Procedure turn W to avoid Andrews LFR.	400 Maintain 1,000′ until passing Alexandria Intersection.*	003—.5 from Alexandria Intersection 6.0 miles.	2 engines or less T-dn C-dn S-dn 36 A-dn More than 2 engines T-dn C-dn S-dn 36 A-dn	 300-1 600-1 400-1 800-2 ------------ ------------ ------------ ------------	 300-1 600-1 400-1 800-2 **200-½ 600-1½ 400-1 800-2	Make a left climbing turn as soon as practical, climb to 1,800′ (or at a higher altitude when requested by ATC) on course 300° from TVOR and proceed to Herndon VOR. *Descend to landing minimums after passing Alexandria Intersection. (Intersection NW course Washington LFR and 007° course to TVOR.) **300-1 required for Runways 9 and 27. These procedures and airport minimums do not provide standard clearance over the following obstructions 596′ monument 1.8 miles N of airport, 422′ monument 1.7 miles W of final approach course, and 193′ stacks 1.5 miles S of airport. AIR CARRIER NOTES: No sliding scale or reduction in visibility authorized for takeoff on Runways 9 and 27.

5. The instrument landing system procedures prescribed in § 609.11 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.

If an ILS instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below:

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Transition to ILS				Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude at glide slope interception inbound (ft.)	Altitude of glide slope and distance to approach end of runway at—		Ceiling and visibility minimums			If visual contact not established upon descent to authorized landing minimums or if landing not accomplished
	From—	To—	Course and distance	Minimum altitudes (ft.)			Outer marker	Middle marker	Condition	Type aircraft: 75 m.p.h. or less	Type aircraft: More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11	12	13
EUGENE, OREG. Mahlon Sweet, 365'. ILS-I-EUG. LOM-EU. Combination ILS and ADF. Procedure No. 1. Amendment No. 10. Effective date: October 29, 1955. Supersedes amendment 9, dated June 4, 1954. Major changes: New format. Change 2-engine takeoff minimum to 300-1 required by criteria; delete air carrier restriction note; add ADF procedure.	EUG-LFR	LOM	059—0.6	2,000	E side N course:* 338° outbound. 158° inbound. 2,000' within 5 miles.	ILS 2,000	1,570—4.6	550—0.6	2 engines or less T-dn C-dn	 300-1 500-1	 300-1 500-1½	Within 4.6 miles after passing LOM (ADF) turn right and climb to 2,000' on N course of EUG-LFR or climb to 2,000' on 355° radial of EUG-VOR within 25 miles. *Procedure turn E for more favorable terrain.
	EUG-VOR	LOM	338—0.2	2,000		ADF 1,500 at LOM			S-dn Runway 16 ILS	300-¾	400-1	
	Cottage Grove FM	S course ILS	320—12.0	3,100					ADF	400-1	400-1	
									A-dn ILS	600-2	600-2	
									ADF	800-2	800-2	
									More than 2 engines T-dn C-dn	 ---------- ----------	 200-½ 600-1½	
									S-dn Runway 16 ILS	----------	400-1	
									ADF	----------	400-1	
									A-dn ILS	----------	600-2	
									ADF	----------	800-2	
FORT WORTH, TEX. Amon Carter, 568.' ILS-IACF. Procedure No. 2. Amendment 3. Effective date: October 29, 1955. Supersedes Amendment 2, dated June 19, 1955. Major changes: Reverse direction and reduce altitude of procedure turn. Reduce straight-in landing minima. Add alternate missed approach procedure.	Duncanville FM	Hensley Intersection# (final).	309—11	1,300	E side SE course: 129° outbound. 309° inbound. 2,000' within 10 miles of Hensley Intersection.# Beyond 10 miles not authorized.	No glide slope 1,300' at Hensley Intersection #4 miles from approach end of runway 31.			2 engines or less T-dn C-dn S-dn 31 A-dn	 300-1 400-1 300-1 800-2	 300-1 500-1 300-1 800-2	Within 4 miles of Hensley Intersection,# climb to 1,900' on NW course of ILS within 25 miles, or proceed to Fort Worth LFR via NW course of ILS and E course LFR, climbing to 2,000'. CAUTION: Radio tower 1,221' mean sea level located 5 miles ENE of outer marker. #Hensley Intersection may be indentified as intersection of SE course ILS, and: (1) DAL R-238, or (2) W course DAL LFR, or (3) bearing 215° to GRP.
	Grand Prairie MHW	Hensley Intersection.#	035—4.5	2,000					More than 2 engines T-dn C-dn S-dn 31 A-dn	 ---------- ---------- ---------- ----------	 200-½ 500-1½ 300-1 800-2	

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Transition to ILS				Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude at glide slope interception inbound (ft.)	Altitude of glide slope and distance to approach end of runway at—		Ceiling and visibility minimums			If visual contact not established upon descent to authorized landing minimums or if landing not accomplished
	From—	To—	Course and distance	Minimum altitudes (ft.)			Outer marker	Middle marker	Condition	Type aircraft		
										75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11	12	13
HURON, S. DAK. W. W. Howes, 1,287′. ILS-HON. LOM-HO. Procedure No. 1, Amendment 3 Combination ILS-ADF. Effective date: October 29, 1955. Supersedes Amendment 2, dated May 26, 1954. Major changes: (1) Item 4, 6 courses revised to agree with Coast and Geodetic; (2) Item 6, distance revised in accordance with policy; (3) ADF altitude added, Item 7; (4) Distances added Items 8 and 9; (5) New format on minimums; (6) Within 4.5 miles added Item 13, and tower height corrected to agree with C & G.	Huron LFR	LOM	332—3.0	2,500	W side NW course: 298° outbound. 118° inbound. 2,500′ within 10 miles.	ILS 2,500	2,433—4.5	1,480—6.0	2 engines or less			Within 4.5 miles (ADF) climb to 2,800′ on SE course ILS within 25 miles, or if directed by ATC, climb to 3,000′ on NE course, HON-LFR within 25 miles. CAUTION: Radio tower 1,484′ mean sea level 1¼ miles S of airport. No approach lights.
	Huron VOR	LOM	157—1.0	2,500		ADF 1,900 over LOM			T-dn	300-1	300-1	
									C-d	400-1	500-1	
									C-n	400-1½	500-1½	
									S-dn 12 ILS	300-¾	300-¾	
									ADF	400-1	400-1	
									A-dn	800-2	800-2	
									More than 2 engines			
									T-dn	----------	200-½	
									C-dn	----------	500-1½	
									S-dn 12 ILS	----------	300-¾	
									ADF	----------	400-1	
									A-dn	----------	800-2	
LANSING, MICH. Capital City, 858′. ILS-ILAN. LOM-LA. Procedure No. 1. Combination ILS-ADF. Effective date: October 29, 1955. Amendment No. 3. Supersedes amendment 2, dated July 17, 1954. Major changes: (1) Transitions revised; (2) new format used; (3) air carrier note revised; (4) distance item 6 revised to 10 miles in accordance with policy.	Lansing VOR	LOM	070—11.0	2,400	N side E course: 099° outbound. 273° inbound. 2,000′ within 10 miles.	ILS 2,000	1,959—4.3	1,040—6.0	2 engines or less			Within 4.3 miles of LOM, climb to 2,200′ on W course ILS within 25 miles or when directed by ATC, make right turn climb, climbing to 2,000′ on NW course. LAN-LFR within 25 miles. CAUTION: Tower 1,880′ mean sea level 6.5 miles SE of LOM. *300-1 required on NW-SE runway. No approach lights. AIR CARRIER NOTE: 400-1 required when glide path inoperative.
	Lansing LFR	LOM	080— 2.0	2,400		ADF 1,500 over LOM			T-dn	300-1	300-1	
									C-dn	400-1	500-1	
	Intersection LAN-VOR 293° radial and back course ILS or 093° bearing to LOM.	LOM	093—22.0	2,400					S-dn 27 ILS	300-¾	300-¾	
									ADF	400-1	400-1	
	Intersection LAN-VOR 321° radial and back course ILS or 093° bearing to LOM.	LOM	093—18.0	2,400					A-dn	800-2	800-2	
									More than 2 engines			
									T-dn	----------	*200-½	
									C-dn	----------	500-1½	
	Flint LOM	Intersection 221° bearing from Flint LOM and ILS course.	221—17.0	2,000					S-dn 27 ILS	----------	300-¾	
									ADF	----------	400-1	
	Intersection 221° bearing from Flint LOM and ILS course.	LOM final	273—23.0	2,000					A-dn	----------	800-2	
	Intersection 112° radial LAN-VOR and bearing 340° to LOM.	LOM	340—10.0	2,900								

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation; facility: class and identification; procedure No. effective date	Transition to ILS				Procedure turn (—) side of final approach course (outbound and inbound): altitudes: limiting distances	Minimum altitude at glide slope interception inbound (ft.)	Altitude of glide slope and distance to approach end of runway at—		Ceiling and visibility minimums			If visual contact not established upon descent to authorized landing minimums or if landing not accomplished
	From—	To—	Course and distance	Minimum altitudes (ft.)			Outer marker	Middle marker	Condition	Type aircraft		
										75 m.p.h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11	12	13
LANSING, MICH. Capital City, 858′. ILS-ILAN. Procedure No. 2. Effective date: October 29, 1955. Amendment No. 1. Supersedes original, dated July 17, 1954. Major changes: (1) Distance revised column 6; (2) new format on minimums in accordance with policy.	LAN VOR	Grand Ledge Intersection*	360—4.5	2,000	S side W course: 273° outbound. 093° inbound. 2,000′ within 10 miles.	No glide slope	No outer marker	No middle marker.	2 engines or less			Within 5 miles of Grand Ledge Intersection climb to 2,400′ on front course ILS, proceed to LOM or when directed by ATC make left turn climbing to 2,000′ on NW course LAN LFR within 25 miles. *Grand Ledge Intersection: Intersection W course LAN ILS and LAN VOR 360° radial. NOTE: Procedure not authorized unless aircraft equipped to receive ILS and VOR simultaneously. **300-1 required on NW-SE runway.
	LAN LFR	Grand Ledge Intersection.*	277—8.0	2,200		1,500′ over Grand Ledge Intersection.	093—5.0		T-dn C-dn S-dn 9 A-dn	300-1 400-1 400-1 800-2	300-1 500-1 400-1 800-2	
	Intersection W course LAN ILS and LAN VOR 293° radial.	Grand Ledge Intersection.*	093—11.0	Final 1,500					More than 2 engines			
	LAN LOM	Grand Ledge Intersection.*	273—10.0	2,400					T-dn C-dn S-dn 9 A-dn	---------- ---------- ---------- ----------	**200-½ 500-1½ 400-1 800-2	
LONG BEACH, CALIF. Municipal, 56′. ILS-LGB LOM-LG. Combination ILS-ADF. Procedure No. 1. Amendment No. 7. Effective October 29, 1955. Supersedes amendment No. 6, dated April 30, 1955. Major changes: Raise missed approach altitude at San Pedro Intersection to 2,500′, S course LAX LFR realigned.	LGB LFR	LOM	135—1.6	1,500	S side SE course: 121° outbound. 301° inbound. 1,500′ within 10 miles of LOM. Beyond 10 miles not authorized.	1,400 ILS	1,320—5.4	245—0.7	2 engines or less			Within 5.4 miles after passing LOM (ADF) climb to 800′ on NW course LGB LFR, turn left to 250° continuing climb to intersection S course LAX LFR and proceed to San Pedro Intersection at minimum of 2,500′. CAUTION: Standard clearance over obstructions not provided for circular minimums. 500′ hill with oil derricks 1 mile S of airport. *300-1 required for takeoff runways 16, 16R, 25L, 34R.
	Huntington Beach FM	LOM	295—9.0	1,400		1,100 ADF			T-dn C-dn	300-1 500-1	300-1 600-1	
	San Pedro Intersection	LOM	039—7.0	1,500					S-dn Runway 30 ILS	300-¾	300-¾	
	LGB VOR	LOM	203—2.0	1,500					ADF	500-1	500-1	
									A-dn ILS	600-2	600-2	
									ADF	800-2	800-2	
									More than 2 engines			
									T-dn C-dn	---------- ----------	*200-½ 600-2	
									S-dn Runway 30 ILS	----------	300-¾	
									ADF	----------	500-1	
									A-dn ILS	----------	600-2	
									ADF	----------	800-2	

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Transition to ILS				Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude at glide slope interception inbound (ft.)	Altitude of glide slope and distance to approach end of runway at—		Ceiling and visibility minimums			If visual contact not established upon descent to authorized landing minimums or if landing not accomplished
	From—	To—	Course and distance	Minimum altitudes (ft.)			Outer marker	Middle marker	Condition	Type aircraft		
										75 m.p.h. or less	More than 75 m.p.h.	
1	2	3	4	5	6	7	8	9	10	11	12	13
LOS ANGELES, CALIF. International, 125′. ILS-LAX LOM-LA. Combination ILS-ADF. Procedure No. 1. Amendment No. 12. Effective date: October 29, 1955. Supersedes Amendment 11, dated March 12, 1955. Major changes: Add note requiring aircraft leaving Downey inbound to leave 3,000′ at the same time; add transition from LAX **VOR.**	LAX LFR	LOM	074—2.0	2,000	S side of E course: 068° outbound. 248° inbound. 2,000′ within 10 miles, and in no case farther E than Downey FM or Radiobeacon.	ILS 1,700 ADF #1,500	1,700—6.04	310—0.64	2 engines or less			Within 6 miles, after passing LOM (ADF) climb to 2,000′ on W course LAX LFR. NOTE: 300-1 required for takeoff Runway 16. *Leave 3,000′ after passing Downey. #On ADF approach cross LAX LFR inbound at minimum of 1,000′ mean sea level.
	Downey FM or Radiobeacon.	LOM	253—9.0	(ILS) *1,700 (ADF) *1,500					T-dn C-dn	300-1 400-1	300-1 600-1	
	LGB LFR	LOM	304—16.0	(ILS) 1,700 (ADF) 1,500					S-dn 25L ILS	200-½	200-½	
	Hollywood Hills FM	LOM	133—14.0	3,000					ADF	400-1	400-1	
	LAX VOR	LOM	068—9.0	2,000					A-dn ILS	600-2	600-2	
									ADF	800-2	800-2	
									More than 2 engines			
									T-dn C-dn	---------- ----------	200-½ 600-1½	
									S-dn 25L ILS	----------	200-½	
									ADF	----------	400-1	
									A-dn ILS	----------	600-2	
									ADF	----------	800-2	
PORTLAND, OREG. International, 23′. ILS-PDX Radiobeacon SVY. Combination ILS-ADF. Procedure No. 1. Amendment No. 6. Effective date: October 29, 1955. Supersedes ILS-ADF. Procedure No. 1. Amendment No. 5, dated July 23, 1955. Major changes: Column 8 add ADF over OM altitude.	Woodland FM	SVY	178—22.0	3,000	S side of course: 278° outbound. 098° inbound. 3,000′ within 10 miles of SVY radiobeacon. Not authorized beyond 10 miles.	3,000	1,370—4.5 ** ADF 1,600 over OM	280—0.6	2 engines or less			Within 0 mile, after passing LMM (ADF) climb to 1,500′ on course of 098° within 10 miles of LMM; thence make climbing right turn to a heading of 230° proceeding to S course of PDX-LFR at 3,000′ or proceed to 175° radial of PDX-VOR at 3,000′ within 15 miles of VOR. Alternate missed approach: When directed by artc climb to 1,500′ on back course of ILS localizer within 10 miles of LMM, making climbing left turn, proceed direct to PDX-LFR or to PDX-VOR at 3,000′. *300-1 required on runways 7-25, 11, 2-20. **If OM not received visually and aurally, maintain 1,600′ to LMM, then climb to 3,000′ on S course of PDX range within 10 miles of LFR.
	La Center FM	SVY	197—13.0	3,000					T-dn C-d C-n	300-1 600-1 600-1	300-1 600-1 700-1	
	PDX VOR	SVY	221—12.0	3,000					S-dn Runway 10 ILS	200-½	200-½	
	PDX LFR	SVY	259—10.0	3,000					ADF	600-1	600-1	
	Willamette FM	SVY	330—22.0	3,000					A-d ILS	600-2	600-2	
	UBG VOR	SVY	360—23.0	3,000					ADF	800-2	800-2	
	All fixes within 25 nautical miles of GCA station may be determined by surveillance radar.								A-n ILS	600-2	700-2	
									ADF	800-2	800-2	
									More than 2 engines			
									T-dn C-d C-n	---------- ---------- ----------	*200-½ 600-1½ 700-1½	
									S-dn Runway 10 ILS	----------	200-½	
									ADF	----------	600-1	
									A-d ILS	----------	600-2	
									ADF	----------	800-2	
									A-n ILS	----------	700-2	
									ADF	----------	800-2	

ILS Standard Instrument Approach Procedure—Continued

City and State; airport name, elevation; facility: class and identification; procedure No.; effective date	Transition to ILS				Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude at glide slope interception inbound (ft.)	Altitude of glide slope and distance to approach end of runway at—		Ceiling and visibility minimums			If visual contact not established upon descent to authorized landing minimums or if landing not accomplished
	From—	To—	Course and distance	Minimum altitudes (ft.)			Outer marker	Middle marker	Condition	Type aircraft: 75 m.p.h. or less	Type aircraft: More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9	10	11	12	13
WASHINGTON, D. C. National, 16′. ILS DCA. Procedure No. 1. Amendment No. 7. Effective date: October 29, 1955. Supersedes amendment 6, dated June 20, 1954. Major changes: Procedure turn distance limited to 10 miles.	Andrews LFR	OM	305—10	1,500	W side of S course:* 183° outbound. 003° inbound. 1,400′ within 10 miles.	1,400	1,360—5.3	205—0.6	2 engines or less T-dn C-dn S-dn 36 A-dn More than 2 engines T-dn C-dn S-dn 36 A-dn	 300-1 600-1 200-½ 600-2 ---------- ---------- ---------- ----------	 300-1 600-1 200-½ 600-2 #200-½ 600-1½ 200-½ 600-2	If contact not established at LMM, make climbing turn to left as soon as practicable and climb to 1,800′ (or higher altitude if directed by ATC) on NW course Washington LFR to Herndon Intersection. Caution: Circling minimums do not provide standard clearance over 596′ monument 1.3 miles N of airport, minimums with glide slope inoperative do not provide standard clearance over 193′ stacks 1.5 miles S of airport. *Nonstandard procedure turn to avoid Andrews Air Force Base traffic. Air Carrier Notes: No sliding scale or reduction in visibility authorized for takeoff on Runways 9 and 27. #300-1 required for takeoff on Runways 9 and 27.
	Springfield MHW	OM	103—12	1,500								
	Radar terminal area transition altitudes. (Radar distances shown in nautical miles.)	OM	E, W and S quadrants of DCA LFR.	1,500′ within 25 miles of OM.								
			N quadrant.	1,800′ within 25 miles.								
			All quadrants (exclusive of restricted areas).	2,500′ within 40 miles.								

6. The ground controlled approach procedures prescribed in § 609.13 are amended to read in part:

GCA Standard Instrument Approach Procedure

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation.

If a GCA instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the ground controller. From initial contact with GCA to final authorized landing minimums, the instructions of the GCA controller are mandatory except when (A) visual reference with ground is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach.

City and State; airport name, elevation; effective date	Radar terminal area; maneuvering altitudes by sectors and limiting distances	Ceiling and visibility minimums						Except when the ground controller may direct otherwise prior to final approach, a missed approach procedure shall be executed as provided below when (a) communication on final approach is lost for more than 5 seconds; (b) directed by ground controller; (c) visual reference is not established upon descent to the authorized landing minimums; or (d) landing is not accomplished
		Runway No.	Condition	Precision approach (PAR)		Surveillance approach (ASR)		
				75 m. p. h. or less	More than 75 m. p. h.	75 m. p. h. or less	More than 75 m. p. h.	
1	2	3	4	5	6	7	8	9
CINCINNATI, OHIO. Greater Cincinnati, 890′. Amendment No. 1. Effective date: October 29, 1955. Supersedes Amendment "Original", dated August 20, 1955. Major change: Corrects runway identification.		2 engines or less						Runways 4, 36, and 31, climb to 2,300′ and proceed to New Baltimore Intersection. Runways 9, 13, 18, 22, and 27, climb to 2,000′ and proceed to ILS LOM.
	From 022° through 105° 2,500′ within 30 nautical miles.	All	T-dn			300-1	300-1	
	From 105° through 180° 2,000′ within 15 nautical miles, 2,500′ within 30 nautical miles.	4, 9, 13, 18, 31, 36.	S-dn			400-1	400-1	
		22, 27				700-1	700-1	
		4, 9, 13, 18, 31, 36.	C-dn			400-1	500-1	
		22, 27				700-1	700-1	
		All	A-dn			800-2	800-2	
		More than 2 engines						
		All	T-dn				200-½	
		4, 9, 13, 18, 31, 36.	S-dn				400-1	
		22, 27					700-1	
		4, 9, 13, 18, 31, 36.	C-dn				500-1½	
		22, 27					700-1½	
		All	A-dn				800-2	

These procedures shall become effective on the dates indicated in Column 1 of the procedures.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

[SEAL]

F. B. Lee,
Administrator of Civil Aeronautics.

[F. R. Doc. 55-7752; Filed, Oct. 6, 1955; 8:45 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

Part 146c—Certification of Chlortetracycline (or Tetracycline) and Chlortetracycline- (or Tetracycline-) Containing Drugs

CHLORTETRACYCLINE OINTMENT

By virtue of the authority vested in the Secretary of Health, Education, and Welfare by the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, 61 Stat. 409, 67 Stat. 389; sec. 701, 52 Stat. 1055; 21 U. S. C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (20 F. R. 1996), the regulations for certification of chlortetracycline (or tetracycline) and chlortetracycline- (or tetracycline-) containing drugs are amended as follows:

In § 146c.202 *Chlortetracycline ointment* * * *, subparagraphs (2) and (4) of paragraph (c) *Labeling* are amended by deleting therefrom the words "tetracycline hydrochloride,".

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry and since it would be against public interest to delay providing for the amendment set forth above.

Effective date. This amendment shall become effective 90 days from the date of publication of this order in the Federal Register.

(Sec. 701, 52 Stat. 1055; 21 U. S. C. 371. Interprets or applies sec. 507, 59 Stat. 463, as amended; 21 U. S. C. 357)

Dated: October 3, 1955.

[SEAL] Geo. P. Larrick,
Commissioner of Food and Drugs.

[F. R. Doc. 55-8132; Filed, Oct. 6, 1955; 8:48 a. m.]

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

Part 6—Exceptions From the Competitive Service

POST OFFICE DEPARTMENT

Effective upon publication in the Federal Register, paragraph (b) (4) is added to § 6.309 as set out below.

§ 6.309 *Post Office Department.* * * *
(b) *Bureau of Facilities.* * * *
(4) One Deputy Assistant Postmaster General.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633; E. O. 10440, 18 F. R. 1823, 3 CFR 1953 Supp.)

United States Civil Service Commission,
[SEAL] Wm. C. Hull,
Executive Assistant.

[F. R. Doc. 55-8134; Filed, Oct. 6, 1955; 8:49 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter I—Farm Credit Administration

Subchapter E—Production Credit System

[FCA Order No. 636]

Part 50—Rules and Regulations for Production Credit Associations

PAYMENT OF DIVIDENDS

The rules and regulations for Production Credit Associations are hereby amended by adding thereto a new section reading as follows:

§ 50.26 *Payment of dividends.* (a) A PCA may pay dividends on its outstanding class A and class B stock, without preference, or on class A stock alone, at a rate not to exceed 7 per centum per annum when (1) it has met all dividend requirements prescribed by the production credit corporation of the district, and the corporation has approved such payment, (2) the association has retired all of its class A stock owned by the corporation, and (3) its surplus account (after payment of dividends) is in an amount at least equal to the minimum amount prescribed by the corporation as required by law: *Provided, however,* That, except with the approval of the Farm Credit Administration, no dividend may be paid by an association if its surplus account (after payment of dividends) is in an amount less than 7½ per centum of the maximum amount of its outstanding loans during the most recent 3-year period.

(b) A production credit association may pay dividends on its outstanding class C stock in accordance with the terms and conditions of each issue of such stock, when such payment is approved by the production credit corporation of the district.

(Secs. 20, 23, 48 Stat. 259, 266, sec. 202, 69 Stat. 663; 12 U. S. C. 1131d, 1131g)

[SEAL] R. B. Tootell,
Governor,
Farm Credit Administration.

[F. R. Doc. 55-8130; Filed, Oct. 6, 1955; 8:48 a. m.]

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter B—Loans, Purchases and Other Operations

[1954 C. C. C. Grain Price Support Bulletin 1, Supp. 3, Amdt. 1, Corn]

Part 421—Grains and Related Commodities

Subpart—1954-Crop Corn Reseal Loan Program

AVAILABILITY; TIME

The regulations issued by Commodity Credit Corporation and Commodity Stabilization Service, published in 19 F. R. 3365, 6902, 7155 and 20 F. R. 411 and 3815 and containing the specific requirements for the 1954-Crop Corn Reseal Loan Program, are hereby amended as follows:

Section 421.727 (b) (3) is amended to allow producers with corn under purchase agreements who notified the county committee before July 31, 1955, of their intention to participate in the reseal loan program more time for the execution of loan documents by changing the date in the third sentence from September 30, 1955, to November 30, 1955, so that the amended subparagraph (3) reads as follows:

§ 421.727 *Availability.* * * *
(b) *Time.* * * *

(3) The producer who signed a purchase agreement on farm-stored corn is required, under the 1954 Corn Price Support Program, to notify the county committee not later than July 31, 1955, if he intends to sell the corn to CCC. If the producer has notified the county committee on or before July 31, 1955, of his intention to sell the corn to CCC, or to participate in this program, he may obtain a farm-storage loan on the corn. The loan documents must be executed by the producer on or before the final date for delivery specified in the delivery instructions, or on or before November 30, 1955, if the producer has not requested or received delivery instructions. The loan documents must be presented for disbursement within 15 days after execution. Disbursement of loans will be made to producers by approved lending agencies under an agreement with CCC, or by ASC county offices by means of sight drafts drawn on CCC. Payment in cash, credit to the producer's account or the drawing of a check or draft shall constitute disbursement. The producer shall not present the loan documents for disbursement unless the corn is in existence and in good condition. If the corn was not in existence and in good condition at the time of disbursment, the total amount disbursed under the loan shall be promptly refunded by the producer. In the event the amount disbursed exceeds the amount authorized under this subpart, the producer shall be personally liable for repayment of the amount of such excess.

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interprets or applies sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; 15 U. S. C. 714c, 7 U. S. C. 1441, 1421)

Issued this 4th day of October 1955.

[SEAL] Earl M. Hughes,
Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 55-8142; Filed, Oct. 6, 1955; 8:51 a. m.]

[1955 CCC Cotton Bulletin 1, Amdt. 4]

Part 427—Cotton

Subpart—1955 Cotton Loan Program

REVISION OF BAGGING (BALE COVERING) REQUIREMENTS

The regulations issued by Commodity Credit Corporation and the Commodity Stabilization Service published in 20 F. R. 4353, 6151, 6238, and 6373 and containing the instructions and requirements with respect to the 1955 Cotton Loan Program are hereby amended as follows:

Section 427.606 (g) as amended is further amended to eliminate the requirement that heads of bales be completely covered so that the amended paragraph reads as follows:

(g) Each bale of cotton must weigh not less than 300 nor more than 700 pounds, gross weight, and must be adequately packaged in new material manufactured for cotton bale covering, except used jute and sugar bagging will be acceptable if such bagging is clean and in sound condition. New bagging used in the Cotton Experimental Bale Cover Program sponsored by the National Cotton Council, Memphis, Tennessee (hereinafter referred to as "Experimental Bale Cover Program") will be acceptable provided there is attached to each bale covered with such bagging a tag which indentifies such bale with the program, the type of cover used on such bale and which shows the actual tare weight and the number of pounds to be added to the gross weight of the bale for the purpose of adjusting the bale to the normal gross weight under such program.

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interprets or applies sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; 15 U. S. C. 714c, 7 U. S. C. 1441, 1421)

Issued this 3d day of October 1955.

[SEAL] WALTER C. BERGER,
Acting Executive Vice President, Commodity Credit Corporation.

[F. R. Doc. 55-8143; Filed, Oct. 6, 1955; 8:51 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DEC. 31, 1953

CERTAIN DEATH BENEFITS SPECIFICALLY EXCLUDED FROM GROSS INCOME

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that, pursuant to the Administrative Procedure Act, approved June 11, 1946, the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 101 (d) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 27, 917; 26 U. S. C. 101 (d), 7805).

[SEAL] T. COLEMAN ANDREWS,
Commissioner of Internal Revenue.

The following regulations under section 101 of the Internal Revenue Code of 1954 are hereby prescribed with respect to amounts received by reason of the death of an insured or an employee occuring after August 16, 1954:

Sec.
1.101 Statutory provisions; certain death benefits.
1.101-1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.
1.101-2 Employees' death benefits.
1.101-3 Interest payments.
1.101-4 Payment of life insurance proceeds at a date later than death.
1.101-5 Alimony, etc., payments.
1.101-6 Effective date.

ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

§ 101 *Statutory provisions; certain death benefits.*

SEC. 101. *Certain death benefits*—(a) *Proceeds of life insurance contracts payable by reason of death*—(1) *General rule.* Except as otherwise provided in paragraph (2) and in subsection (d), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

(2) *Transfer for valuable consideration.* In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by paragraph (1) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and other amounts subsequently paid by the transferee. The preceding sentence shall not apply in the case of such transfer—

(A) If such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor, or

(B) If such transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer.

(b) *Employees' death benefits*—(1) *General rule.* Gross income does not include amounts received (whether in a single sum or otherwise) by the beneficiaries or the estate of an employee, if such amounts are paid by or on behalf of an employer and are paid by reason of the death of the employee.

(2) *Special rules for paragraph (1)*—(A) *$5,000 limitation.* The aggregate amounts excludable under paragraph (1) with respect to the death of any employee shall not exceed $5,000.

(B) *Nonforfeitable rights.* Paragraph (1) shall not apply to amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (other than total distributions payable, as defined in section 402 (a) (3), which are paid to a distributee, by a stock bonus, pension, or profit-sharing trust described in section 401 (a) which is exempt from tax under section 501 (a), or under an annuity contract under a plan which meets the requirements of paragraphs (3), (4), (5), and (6) of section 401 (a), within one taxable year of the distributee by reason of the employee's death).

(C) *Joint and survivor annuities.* Paragraph (1) shall not apply to amounts received by a surviving annuitant under a joint and survivor's annuity contract after the first day of the first period for which an amount was received as an annuity by the employee (or would have been received if the employee had lived).

(D) *Other annuities.* In the case of any amount to which section 72 (relating to annuities, etc.) applies, the amount which is excludable under paragraph (1) (as modified by the preceding subparagraphs of this paragraph) shall be determined by reference to the value of such amount as of the day on which the employee died. Any amount so excludable under paragraph (1) shall, for purposes of section 72, be treated as additional consideration paid by the employee.

(c) *Interest.* If any amount excluded from gross income by subsection (a) or (b) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(d) *Payment of life insurance proceeds at a date later than death*—(1) *General rule.* The amounts held by an insurer with respect to any beneficiary shall be prorated (in accordance with such regulations as may be prescribed by the Secretary or his delegate) over the period or periods with respect to which such payments are to be made. There shall be excluded from the gross income of such beneficiary in the taxable year received—

(A) Any amount determined by such proration, and

(B) In the case of the surviving spouse of the insured, that portion of the excess of the amounts received under one or more agreements specified in paragraph (2) (A) (whether or not payment of any part of such amounts is guaranteed by the insurer) over the amount determined in subparagraph (A) of this paragraph which is not greater than $1,000 with respect to any insured.

Gross income includes, to the extent not excluded by the preceding sentence, amounts received under agreements to which this subsection applies.

(2) *Amount held by an insurer.* An amount held by an insurer with respect to any beneficiary shall mean an amount to which subsection (a) applies which is—

(A) Held by any insurer under an agreement provided for in the life insurance contract, whether as an option or otherwise, to pay such amount on a date or dates later than the death of the insured, and

(B) Is equal to the value of such agreement to such beneficiary

(i) As of the date of death of the insured (as if any option exercised under the life insurance contract were exercised at such time), and

(ii) As discounted on the basis of the interest rate and mortality tables used by the insurer in calculating payments under the agreement.

(3) *Surviving spouse.* For purposes of this subsection, the term "surviving spouse" means the spouse of the insured as of the date of death, including a spouse legally separated but not under a decree of absolute divorce.

(4) *Application of subsection.* This subsection shall not apply to any amount to which subsection (c) is applicable.

(e) *Alimony, etc., payments*—(1) *In general.* This section shall not apply to so much of any payment as is includible in the gross income of the wife under section 71 (relating to alimony) or section 682 (relating to income of an estate or trust in case of divorce, etc.).

(2) *Cross reference.* For definition of "wife", see section 7701 (a) (17).

(f) *Effective date of section.* This section shall apply only to amounts received by reason of the death of an insured or an employee occurring after the date of enactment of this title. Section 22 (b) (1) of the Internal Revenue Code of 1939 shall apply to amounts received by reason of the death of an insured or an employee occurring on or before such date.

§ 1.101-1 *Exclusion from gross income of proceeds of life insurance contracts payable by reason of death*—(a) *In general.* Section 101 (a) (1) states the general rule that the proceeds of life insurance policies, if paid by reason of the death of the insured, are excluded from the gross income of the recipient. Death benefit payments under workmen's compensation insurance contracts, or under accident and health insurance contracts, having the characteristics of life insurance proceeds payable by reason of death, are covered by this provision. For provisions relating to death benefits paid by or on behalf of employers, see section 101 (b) and § 1.101-2. The exclusion from gross income allowed by section 101 (a) applies whether payment is made to the estate of the insured or to any beneficiary (individual, corporation or partnership) and whether it is made directly or in trust. The extent to which this exclusion applies in cases where life insurance policies have been transferred for valuable consideration is stated in section 101 (a) (2) and in paragraph (b) of this section. In cases where the proceeds of a life insurance policy, payable by reason of the death of the insured, are paid other than in a single sum at the time of such death, the amounts to be excluded from gross income may be affected by the provisions of section 101 (c) (relating to amounts held under agreements to pay interest) or section 101 (d) (relating to amounts payable at a date later than death). See §§ 1.101-3 and 1.101-4. For rules governing the taxability of insurance proceeds constituting benefits payable on the death of an employee under pension, profit-sharing, or stock bonus plans described in section 401 (a) and exempt under section 501 (a), or under annuity plans meeting the requirements of section 401 (a) (3), (4), (5), and (6), see also sections 402 (a) and 403 (a) and the regulations thereunder.

(b) *Transfers of life insurance policies.* (1) In the case of a transfer, by assignment or otherwise, of a life insurance policy or any interest therein for a valuable consideration, the amount of the proceeds attributable to such policy or interest which is excludable from the transferee's gross income is limited to the sum of (i) the actual value of the consideration for such transfer, and (ii) the premiums and other amounts subsequently paid by the transferee (see section 101 (a) (2) and example (1) of subparagraph (5) of this paragraph). However, this limitation on the amount excludable from the transferee's gross income does not apply (except in certain special cases involving a series of transfers), where the basis of the policy or interest transferred, for the purpose of determining gain or loss with respect to the transferee, is determinable, in whole or in part, by reference to the basis of such contract or interest in the hands of the transferor (see section 101 (a) (2) (A) and examples (2) and (4) of subparagraph (5) of this paragraph). Neither does the limitation apply where the policy or interest therein is transferred to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer (see section 101 (a) (2) (B)). For rules relating to gratuitous transfers, see subparagraph (2) of this paragraph. For special rules with respect to certain cases where a series of transfers is involved, see subparagraph (3) of this paragraph.

(2) In the case of a gratuitous transfer, by assignment or otherwise, of a life insurance policy or any interest therein, as a general rule the amount of the proceeds attributable to such policy or interest which is excludable from the transferee's gross income under section 101 (a) is limited to the sum of (i) the amount which would have been excludable by the transferor (in accordance with this paragraph) if no such transfer had taken place, and (ii) any premiums and other amounts subsequently paid by the transferee. (See example (6) of subparagraph (5) of this paragraph.) However, where the transfer in question is made to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer, the entire amount of the proceeds attributable to the policy or interest transferred shall be excludable from the transferee's gross income (see section 101 (a) (2) (B) and example (7) of subparagraph (5) of this paragraph).

(3) In the case of a series of transfers, if the last transfer of a life insurance policy or an interest therein is for a valuable consideration—

(i) The general rule is that the final transferee shall exclude from gross income, with respect to the proceeds of such policy or interest therein, only the sum of—

(*a*) The actual value of the consideration paid by him, and

(*b*) The premiums and other amounts subsequently paid by him;

(ii) If the final transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer, the final transferee shall exclude the entire amount of the proceeds from gross income;

(iii) Except where subdivision (ii) of this subparagraph applies, if the basis of the policy or interest transferred, for the purpose of determining gain or loss with respect to the final transferee, is determinable, in whole or in part, by reference to the basis of such policy or interest therein in the hands of the transferor, the amount of the proceeds which is excludable by the final transferee is limited to the sum of—

(*a*) The amount which would have been excludable by his transferor if no such transfer had taken place, and

(*b*) Any premiums and other amounts subsequently paid by the final transferee himself.

(4) For the purposes of section 101 (a) (2) and subparagraphs (1) and (3) of this paragraph, a "transfer for a valuable consideration" is any absolute transfer for value of a right to receive all or a part of the proceeds of a life insurance policy. Thus, the creation, for value, of an enforceable contractual right to receive all or a part of the proceeds of a policy may constitute a transfer for a valuable consideration of the policy or an interest therein. On the other hand, the pledging or assignment of a policy as collateral security is not a transfer for a valuable consideration of such policy or an interest therein, and section 101 is inapplicable to any amounts received by the pledgee or assignee.

(5) The application of this paragraph may be illustrated by the following examples:

Example (1). A pays premiums of $500 for an insurance policy in the face amount of $1,000 upon the life of B, and subsequently transfers the policy to C for $600. C receives the proceeds of $1,000 upon the death of B. The amount which C can exclude from his gross income is limited to $600 plus any premiums paid by C subsequent to the transfer.

Example (*2*). The A Corporation purchases for a single premium of $500 an insurance policy in the face amount of $1,000 upon the life of X, one of its employees, naming the A Corporation as beneficiary. The A Corporation transfers the policy to the B Corporation in a tax-free reorganization (the policy having a basis for determining gain or loss in the hands of the B Corporation determined by reference to its basis in the hands of the A Corporation). The B Corporation receives the proceeds of $1,000 upon the death of X. The entire $1,000 is to be excluded from the gross income of the B Corporation.

Example (*3*). The facts are the same as in example (2) except that, prior to the death of X, the B Corporation transfers the policy to the C Corporation for $600. The C Corporation receives the proceeds of $1,000 upon the death of X. The amount which the C Corporation can exclude from its gross income is limited to $600 plus any premiums paid by the C Corporation subsequent to the transfer of the policy to it.

Example (*4*). The facts are the same as in example (3) except that, prior to the death of X, the C Corporation transfers the policy to the D Corporation in a tax-free reorganization (the policy having a basis for determining gain or loss in the hands of the D Corporation determined by reference to its basis in the hands of the C Corporation). The D Corporation receives the proceeds of $1,000 upon the death of X. The amount which the D Corporation can exclude from its gross income is limited to $600 plus any premiums paid by the C Corporation and the D Corporation subsequent to the transfer of the policy to the C Corporation.

Example (*5*). The facts are the same as in example (3) except that, prior to the death of X, the C Corporation transfers the policy of the E Corporation, in which X is a shareholder. The E Corporation receives the proceeds of $1,000 upon the death of X.

The entire $1,000 is to be excluded from the gross income of the E Corporation.

Example (6). A pays premiums of $500 for an insurance policy in the face amount of $1,000 upon his own life, and subsequently transfers the policy to his wife B for $600. B later transfers the policy without consideration to C, who is the son of A and B. C receives the proceeds of $1,000 upon the death of A. The amount which C can exclude from his gross income is limited to $600 plus any premiums paid by B and C subsequent to the transfer of the policy to B.

Example (7). The facts are the same as in example (6) except that, prior to the death of A, C transfers the policy without consideration to A, the insured. A's estate receives the proceeds of $1,000 upon the death of A. The entire $1,000 is to be excluded from the gross income of A's estate.

§ 1.101–2 *Employees' death benefits*—(a) *In general.* (1) Section 101 (b) states the general rule that amounts up to $5,000 which are paid to the beneficiaries or the estate of an employee, or former employee, by or on behalf of an employer and by reason of the death of the employee shall be excluded from the gross income of the recipient. This exclusion from gross income applies whether payment is made to the estate of the employee or to any beneficiary (individual, corporation or partnership), whether it is made directly or in trust, and whether or not it is made pursuant to a contractual obligation of the employer. The exclusion applies whether payment is made in a single sum or otherwise, subject to the provisions of section 101 (c), relating to amounts held under an agreement to pay interest thereon (see § 1.101–3).

(2) The exclusion does not apply to amounts constituting income in respect of decedents under section 691, such as payments for uncollected salary or unused leave, nor to certain other amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101 (b) (2) (B) and paragraph (d) of this section), nor to amounts received as an annuity under a joint and survivor annuity obligation where the employee was the primary annuitant and the annuity starting date occurred before the death of the employee (see section 101 (b) (2) (C) and paragraph (e) (1) (ii) of this section). In the case of amounts received by a beneficiary as an annuity (but not as a survivor under a joint and survivor annuity with respect to which the employee was the primary annuitant), the exclusion is applied indirectly by means of the provisions of section 72 and the regulations thereunder (see section 101 (b) (2) (D) and paragraph (e) (1) (iii) and (iv) of this section).

(3) The total amount excludable with respect to any employee may not exceed $5,000 regardless of the number of employers or the number of beneficiaries (for allocation of the exclusion among beneficiaries, see paragraph (c) of this section). For rules governing the taxability of benefits payable on the death of an employee under pension, profit-sharing, or stock bonus plans described in section 401 (a) and exempt under section 501 (a), or under annuity plans meeting the requirements of section 401 (a) (3), (4), (5), and (6), see also sections 402 (a) and 403 (a) and the regulations thereunder.

(b) *Payments under certain employee benefit plans.* Where a payment is made by reason of the death of an employee by a welfare fund or a trust, including a stock bonus, pension, or profit-sharing trust described in section 401 (a), or by an insurance company (if such payment does not constitute "life insurance" within the purview of section 101 (a)), the payment shall be considered to have been made by or on behalf of the employer to the extent it exceeds amounts contributed by, plus amounts which are income in respect of, the deceased employee. For provisions governing the taxability of distributions payable on the death of an employee participant under a trust described in section 401 (a) and exempt under section 501 (a), which has purchased annuity contracts, life insurance contracts, or retirement income contracts with life insurance protection, see § 1.402 (a)–1 (a) (4).

(c) *Allocation of the exclusion.* (1) Where the aggregate payments by or on behalf of an employer or employers as death benefits to the beneficiaries or the estate of a deceased employee exceed $5,000, the $5,000 exclusion shall be apportioned among them in the same proportion as the amount received by or the present value of the amount payable to each bears to the total death benefits paid or payable by or on behalf of the employer or employers.

(2) The application of the rule in subparagraph (1) of this paragraph may be illustrated by the following example:

Example. The M Corporation, the employer of A, a deceased employee who died November 30, 1954, makes payments in 1955 to the beneficiaries of A as follows: $5,000 to W, A's widow, $2,000 to X, the son of A, and $3,000 to Y, the daughter of A. No other amounts are paid by any other employer of A to his estate or beneficiaries. By application of the apportionment rule stated above, W, the widow, will exclude $2,500 ($5,000/$10,000, or one-half, of $5,000); X, the son, will exclude $1,000 ($2,000/$10,000, or one-fifth, of $5,000); and Y, the daughter, will exclude $1,500 ($3,000/$10,000, or three-tenths, of $5,000).

(d) *Nonforfeitable rights.* (1) Except as provided in subparagraph (3) of this paragraph, the exclusion provided by section 101 (b) does not apply to amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living. Section 101 (b) (2) (B). For the purpose of section 101 (b) and this paragraph, an employee shall be considered to have had a nonforfeitable right with respect to—

(i) Any amount to which he would have been entitled—

(*a*) If he had made an appropriate election or demand, or

(*b*) Upon retirement or termination of his employment,

immediately before his death (see examples (5) and (6) of subparagraph (2) of this paragraph); or

(ii) The present value (immediately before his death) of—

(*a*) Amounts payable as an annuity (as defined in § 1.72–2 (b), whether immediate or deferred) by or on behalf of the employer (see example (1) of subparagraph (2) of this paragraph), or

(*b*) Amounts which would have been so payable if the employee had terminated his employment and continued to live;

or

(iii) Any amount to the extent it is paid in lieu of amounts described in either subdivision (i) or subdivision (ii) of this subparagraph. See examples (2), (3), and (4) of subparagraph (2) of this paragraph.

For purposes of subdivision (iii) of this subparagraph, any amount paid in discharge of an obligation which arose solely because of the existence of a particular fact or circumstance subsequent to the employee's death shall not be considered an amount paid in lieu of amounts described in subdivision (i) or (ii) of this subparagraph. Subdivision (iii) of this subparagraph shall apply, however, to the extent indicated therein, to amounts payable without regard to any such contingency (to the extent that such amounts are equal to or less than those described in subdivisions (i) and (ii) of this subparagraph which are not paid).

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples, in which it is assumed that the plans are not "qualified" plans:

Example (1). A, who was a participant under the B Company pension plan, retired on December 31, 1953. He had made no contributions to the plan. Upon his retirement, he became entitled to monthly payments of $100 payable for life, or 120 months certain. A died on October 31, 1954, having received 10 monthly payments of $100 each. After his death, the monthly payments became payable to his estate for the remaining 110 months certain. No exclusion from gross income is allowed to A's estate (or any beneficiary who receives the right to such payments from the estate), since the employee's right to the monthly payments was nonforfeitable at the date of his death.

Example (2). C, a participant under the D Company pension plan, died on December 15, 1954, while actively in the employment of the Company, survived by a widow and minor children. Because of his years of service, he would have been entitled to an annuity for life, his own contributions to the plan and interest thereon being guaranteed, if he had retired or terminated his employment at a time immediately before his death. The plan further provides that: (a) If, but only if, an employee is survived by a widow and minor children, his widow is to receive an annuity for her life without regard to whether or not the employee had begun his annuity; (b) any payments made with respect to his widow's annuity are to reduce the guaranteed amount to an equal extent; and (c) if the employee is not so survived, the guaranteed amount is payable to his beneficiary or estate, but no amount is payable to anyone with respect to what would have been the widow's annuity. In view of these provisions, that portion of the present value of the annuity payable to C's widow which exceeds the guaranteed amount shall be considered paid neither as an amount, nor in lieu of an amount, which C had a nonforfeitable right to receive while living. The reason for this result is that the payment of such excess is contingent upon C's being survived by a widow and minor children, a circumstance existing subsequent to his death. Conversely, to the extent that the present value of the annuity payable to C's widow does not exceed the guaranteed amount, annuity payments attributable to such present value shall be considered paid in lieu of an amount which C had a nonforfeitable right to receive while living.

Example (3). M, a participant under the Y Company pension plan, died on January 1, 1955, while actively in the employment of the Company. The Y Company plan provides that where an employee dies in service the present value of the accumulated credits which he could have obtained at that time if he had instead separated from the service shall be paid in a single sum to his surviving spouse or to his estate if no widow survives him. The present value of M's accumulated credits, at the time of his death, was $10,000. However, the plan also provides that a surviving spouse may elect to take, in lieu of a single sum, an annuity the present value of which exceeds such sum by $2,500. M's widow elects to receive an annuity (the present value of which is $12,500). Therefore, $2,500 is an amount to which the exclusion of section 101 (b) and this section shall apply.

Example (4). N, an employee of the B Company, continues to work after reaching the normal retirement age of 60 years, although he could have retired at that age and obtained an annuity of $3,000 per year for his life. N is not entitled to any part of the annuity while he is employed and receiving compensation. N dies at the age of 67 while still in active employment. Since he had passed normal retirement age, his additional years of service did not entitle him to a larger annuity at age 67 than that which he could have obtained at age 60. However, the plan of the B Company provides that in the event of an employee's death prior to separation from the service, his widow is to be paid an annuity for her life in the same amount per year as that which the employee could have obtained if he had instead retired, but if no widow survives him, the present value of the annuity which the employee could have obtained at a time just before his death is to be paid a named beneficiary or the estate of the employee. Assuming that the present value of the annuity to N's widow, whose age is 61 years, is $36,000 and the present value of the annuity which would have been payable to N at age 67 if he had then retired is $23,500, the present value of the widow's annuity, to the extent of $23,500, is an amount which is payable in lieu of amounts which the employee had a nonforfeitable right to receive while living because it does not exceed the value of his nonforfeitable rights and is not otherwise paid. On the other hand, the excess of the value of the widow's annuity over the value of the employee's annuity, $12,500 ($36,000 minus $23,500), is an amount to which section 101 (b) applies since the employee had no right to any part of it. If no other death benefits are payable, a $5,000 exclusion is available (see section 101 (b) (2) (D) and paragraph (e) of this section).

Example (5). The trustee of the C Corporation noncontributory profit-sharing plan is required under the provisions of the plan to pay to the beneficiary of B, an employee of the C Corporation who died on July 1, 1955, the benefit due on account of the death of B. The provisions of the profit-sharing plan give each participating employee in case of involuntary termination of employment a 10 percent vested interest in the amount accumulated in his account for each year of participation in the plan, but if such an employee leaves the corporation's employ voluntarily before retirement, he forfeits the entire amount in his account. In case of death, the entire credit in the participant's account is to be paid to his beneficiary. At the time of B's death, he has been a participant for three years and the accumulation in his account is $8,000. After his death this amount is paid to his beneficiary. At the time of B's death, the amount distributable to him on account of involuntary termination of employment would have been $2,400 (30 percent of $8,000). The difference of $5,600 ($8,000 minus $2,400), payable to the beneficiary of B is an amount payable solely by reason of B's death. Accordingly, $5,000 of the $5,600 may be excluded from the gross income of the beneficiary receiving such payment (assuming no other death benefits are involved). However, if it is assumed that the facts are the same as above, except that at the time of his death B has been a participant for 6 years, the amount distributable to him on account of involuntary termination of employment would have been $4,800 (60 percent of $8,000). The difference of $3,200 ($8,000 minus $4,800), payable to B's beneficiary, is an amount payable solely by reason of B's death. Accordingly, $3,200 may be excluded from the gross income of the beneficiary receiving such payment (assuming no other death benefits are involved).

Example (6). The X Corporation instituted a trust, forming part of a pension plan, for its employees, the cost thereof being borne entirely by the corporation. The plan provides, in part, that if, after 10 or more years of service, an employee leaves the employ of the corporation involuntarily, before retirement, a percentage of the reserve provided for the employee in the trust fund will be paid the employee as follows: 10 to 15 years of service, 25 percent; 15 to 20 years of service, 50 percent; 20 to 25 years of service, 75 percent; 25 or more years of service, 100 percent. The plan further provides that if an employee dies before reaching retirement age, his beneficiary will receive a percentage of the reserve provided for the employee in the trust fund, on the same basis as shown in the preceding sentence. However, no amount will be paid an employee who voluntarily leaves the corporation's employ. Y, an employee of the X Corporation for 17 years, died before attaining retirement age while in the employ of the corporation. At the time of his death, $15,000 was the reserve provided for him in the trust. His beneficiary receives $7,500, an amount equal to 50 percent of the reserve provided for Y's retirement. No exclusion from gross income may be made by the beneficiary with respect to such payment since Y, prior to his death, had a nonforfeitable right to receive $7,500.

(3) (i) Notwithstanding the rule stated in subparagraph (1) of this paragraph and illustrated in subparagraph (2) of this paragraph, the exclusion from gross income provided by section 101 (b) applies to the receipt of certain amounts, paid under "qualified" plans, with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101 (b) (2) (B)). The payments to which this exclusion applies are—

(*a*) "Total distributions payable" by a stock bonus, pension, or profit-sharing trust described in section 401 (a) which is exempt from tax under section 501 (a), and

(*b*) "Total amounts" paid under an annuity contract under a plan meeting the requirements of section 401 (a) (3), (4), (5), and (6),

provided such distributions or amounts are paid in full within one taxable year of the distributee (see example (3) of subdivision (ii) of this subparagraph). For the purpose of applying section 101 (b), "total distributions payable" means the balance to the credit of an employee which becomes payable to a distributee on account of the employee's death, either before or after separation from the service (see section 402 (a) (3) (C), the regulations thereunder, and examples (2) and (4) of subdivision (ii) of this subparagraph); and "total amounts" means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death, either before or after separation from the service (see section 403 (a) (2) (B), the regulations thereunder, and example (1) of subdivision (ii) of this subparagraph).

(ii) The applicaton of the provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (1). The widow of an employee elects, under a "qualified" plan, to receive in a lump sum the present value of the annuity which C, the deceased employee, could have obtained at a time just before his death if he had retired at that time. Such present value is $6,000. Of this amount, $5,000 is excludable from the widow's gross income despite the fact that C had a nonforfeitable right to the amount in lieu of which the payment is made, since such payment is an amount to which subdivision (i) applies (assuming no other death benefits are involved).

Example (2). The trustee of the C Corporation noncontributory, "qualified", profit-sharing plan is required under the provisions of the plan to pay to the beneficiary of B, an employee of the C Corporation who died on July 1, 1955, the benefit due on account of the death of B. The provisions of the profit-sharing plan give each participating employee, in case of voluntary or involuntary termination of employment, a 10 percent vested interest in the amount accumulated in his account for each year of participation in the plan, but, in case of death, the entire credit to the participant's account is to be paid to his beneficiary. At the time of B's death, he had been a participant for five years. The accumulation in his account was $8,000, and the amount which would have been distributable to him in the event of voluntary or involuntary termination of employment was $4,000 (50 percent of $8,000). After his death, $8,000 is paid to his beneficiary in a lump sum. (It may be noted that these are the same facts as in example (5) of subparagraph (2) except that the employee has been a participant for five years instead of three, the plan is a "qualified" plan, and payments do not depend on whether an employee leaves voluntarily or involuntarily.) It is immaterial that the employee had a nonforfeitable right to $4,000, because the payment of the $8,000 to the beneficiary is the payment of the "total distributions payable" within one taxable year of the distributee to which subdivision (i) applies. Assuming no other death benefits are involved, the beneficiary may exclude $5,000 of the $8,000 payment from gross income.

Example (3). The facts are the same as in example (2) except that the beneficiary is entitled to receive only the $4,000 to which the employee had a nonforfeitable right and elects to receive it over a period of ten years. Since the "total distributions payable" are not paid within one taxable year of the distributee, no exclusion from gross income is allowable with respect to the $4,000.

Example (4). The X Corporation instituted a trust, forming part of a "qualified", profit-sharing plan for its employees, the cost thereof being borne entirely by the corporation. The plan provides, in part, that if, after 10 or more years of service, an employee leaves the employ of the corporation, either voluntarily or involuntarily, before retirement, a percentage of the reserve provided for the employee in the trust fund will be paid the employee as follows: 10 to 15 years of service, 25 percent; 15 to 20 years of service, 50 percent; 20 to 25 years of service, 75 percent; 25 or more years of service, 100 percent. The plan further provides that if an employee dies before reaching retirement age, his beneficiary will receive a percentage of the reserve provided for the employee in the trust fund, on the same basis as shown in the preceding sentence. Y, an employee of the X Corporation for 17 years, died before attaining retirement age while in the employ of the corporation. At the time of his death, $15,000 was the reserve provided for him in the trust fund. His beneficiary receives $7,500 in a lump sum, an amount equal to 50 percent of the reserve provided for Y's retirement. (It may be noted that these are the same facts as in example (6) of subparagraph (2) except that the plan is a "qualified" plan and payments do not depend on whether an employee leaves voluntarily or involuntarily.) The beneficiary may exclude from gross income (assuming no other death benefits are involved) $5,000 of the $7,500, since the latter amount constitutes "total distributions payable" paid within one taxable year of the distributee, to which subdivision (i) applies.

(e) *Annuity payments.* (1) Where death benefits are paid in the form of annuity payments, the following rules shall govern for purposes of the exclusion provided in section 101 (b):

(i) The exclusion from gross income provided by section 101 (b) does not apply to amounts, paid as an annuity, with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living, or to amounts paid in lieu thereof. See paragraph (d) of this section.

(ii) No exclusion is allowed under section 101 (b) (2) (C) for amounts received by a surviving annuitant under a joint and survivor's annuity contract if the annuity starting date (as defined in section 72 (c) (4) and § 1.72-4 (b)) occurs before the death of the employee. If the annuity starting date occurs after the death of the employee, the joint and survivor's annuity contract shall be treated as an annuity to which section 101 (b) (2) (D) applies. See subdivision (iii) of this subparagraph.

(iii) (*a*) Subject to the other limitations stated in section 101 (b) and in this section (see section 101 (b) (2) (D)), the amount to which the exclusion of section 101 (b) shall apply, with respect to amounts to be paid as an annuity (as defined in § 1.72-2 (b)), shall be the amount by which the present value of the annuity to be paid the beneficiary, computed as of the date of the employee's death, exceeds the value (if any) of whichever of the following is the larger:

(*1*) Amounts contributed by the employee, or

(*2*) Amounts with respect to which the employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living, or amounts paid in lieu thereof (see paragraph (d) of this section).

(*b*) The present value of an annuity (immediately before the death of the employee), to the employee, or (immediately after the death of the employee), to his estate or beneficiary, shall be determined as follows:

(*1*) In the case of an annuity paid by an insurance company, by use of the discount interest rates and mortality tables used by the insurer in determining the installment benefits;

(*2*) In the case of an annuity paid by an organization (other than an insurance company) regularly engaged in issuing annuity contracts, by reference to the cost of a comparable contract purchased from an insurance company; and,

(*3*) In the case of an annuity to which neither of the foregoing is applicable, by use of the appropriate tables of § 81.10 (i) of Regulations 105 (26 CFR (1939) 81.10 (i)) (pertaining to the estate tax), as supplemented by "Actuarial Values for Estate and Gift Tax" (Internal Revenue Service publication No. 11, 1955).

(iv) Any amount excludable under section 101 (b) (2) (D) (see subdivision (iii) of this subparagraph) shall, for purposes of section 72, be treated as additional consideration paid by the employee. See regulations issued under section 72.

(v) Where more than one beneficiary, or more than one death benefit, is involved, the exclusion provided by section 101 (b) shall be apportioned to the various beneficiaries and benefits in accordance with the proportion that the present value of each benefit bears to the total present value of all the benefits.

(2) The application of these principles may be illustrated by the following examples:

Example (1). (i) Under the profit-sharing plan of the C Corporation, W, the widow of employee X, who is 55 years old at the time of X's death, is entitled to an immediate annuity of $2,000 per year during her life and C, the minor child of X, is entitled to receive $1,000 per year for 15 years. X made no contributions under the plan and died while still employed by the C Corporation. At the time of X's death, the amount in his account is $18,000. Under the terms of the plan, this amount would have been distributable to him on account of voluntary termination of employment, but would not have been payable after his death except in the form of the annuities just described. This amount, accordingly, constitutes a nonforfeitable interest in lieu of which the annuities are paid. The exclusion does not apply, except to the extent that the present value of the annuities exceeds $18,000, whether or not the plan is "qualified", since the total of the amount in X's account will not be paid within one taxable year of the distributees. See subdivision (i) of subparagraph (1).

(ii) The computation of the exclusion applicable to the interests of W and C (assuming that the payments will not be made by an insurance company or some other organization regularly engaged in issuing annuity contracts) is, by application of the tables in § 81.10 (i) of Regulations 105 (26 CFR (1939) 81.10 (i)) (pertaining to the estate tax), as follows: The present value of W's interest is $26,243.60, determined by multiplying the annual payment of $2,000 by 13.1218 (the factor in Table I for a person aged 55); the present value of C's interest is $11,517.40, determined by multiplying the yearly payment of $1,000 by 11.5174 (the factor in Table II for payments for a term certain of 15 years). The present value of both annuities is $37,761.00 and (assuming no other death benefits are involved), the total amount excludable is $5,000, because the total present value of the annuities exceeds the employee's nonforfeitable interest by more than $5,000 ($37,761 minus $18,000 equal $19,761). The exclusion allocable to W's interest is $26,243.60/$37,761.00 times $5,000 or $3,474.96; the exclusion allocable to C's interest is $11,517.40/$37,761.00 times $5,000 or $1,525.04. That portion of the death benefit exclusion as so determined for each beneficiary is to be treated as consideration paid by the employee, for purposes of section 72.

Example (2). The facts are the same as in example (1), except that the nonforfeitable interest of X, at the time of his death, amounted to $33,761.00. Since the present value of both annuities (namely, $37,761.00) exceeds the value of such nonforfeitable interest by only $4,000, the latter amount is the total amount excludable from the gross income of the beneficiaries. This $4,000 exclusion is to be divided in the same proportions as those indicated in example (1). Thus, the exclusion allocable to W's interest is $26,243.60/$37,761.00 times $4,000 or $2,779.97, and the exclusion allocable to the interest of C is $11,517.40/$37,761.00 times $4,000 or $1,220.03. That portion of the death benefit exclusion as so determined for each beneficiary is to be treated as consideration paid by the employee, for purposes of section 72.

§ 1.101-3 *Interest payments.* Section 101 (c) provides that if any amount excluded from gross income by section 101 (a) (relating to life insurance proceeds) or section 101 (b) (relating to employees' death benefits) is held under an agreement to pay interest thereon, the interest payments shall be included in gross income. This provision applies to payments made (either by an insurer or by or on behalf of an employer) of interest earned on any amount so excluded from gross income which is held without substantial diminution of the principal amount during the period when such interest payments are being made or credited to the beneficiaries or estate of the insured or the employee. For example, if a monthly payment is $100, of which $99 represents interest and $1 represents diminution of the principal amount, the principal amount shall be considered held under an agreement to pay interest thereon and the interest payment shall be included in the gross income of the recipient. Section 101 (c) applies whether the election to have an amount held under an agreement to pay interest thereon is made by the insured or employee or by his beneficiaries or estate, and whether or not an interest rate is explicitly stated in the agreement. Section 101 (d), relating to the payment of life insurance proceeds at a date later than death, shall not apply to any amount to which section 101 (c) and this section apply. See section 101 (d) (4).

§ 1.101-4 *Payment of life insurance proceeds at a date later than death*—(a) *In general.* (1) (i) Section 101 (d) states the provisions governing the exclusion from gross income of amounts received under a life insurance contract (paid by reason of the death of the insured) which are paid to a beneficiary on a date or dates later than the death of the insured. Section 101 (d) (1) (A) provides an exclusion from gross income of any amount determined by a proration, under applicable regulations, of "the amount held by an insurer with respect to any beneficiary." The quoted phrase is defined in section 101 (d) (2) (see paragraph (b) of this section), and the regulations governing proration are stated in paragraph (c) of this section. The prorated amounts are to be excluded from the gross income of the beneficiary regardless of the taxable year in which they are actually received (see subparagraph (4) of paragraph (c) of this section).

(ii) Section 101 (d) (1) (B) provides an additional exclusion where life insurance proceeds are paid to the surviving spouse of an insured. For purposes of this exclusion, the term "surviving spouse" means the spouse of the insured as of the date of death, including a spouse legally separated, but not under a decree of absolute divorce (section 101 (d) (3)). To the extent that the total payments made in excess of the amounts determined by proration under section 101 (d) (1) (A) do not exceed $1,000 in the taxable year of receipt, they shall be excluded from the gross income of the surviving spouse (whether or not payment of any part of such amounts is guaranteed by the insurer). See subparagraph (4) of paragraph (c) of this section.

(2) The principles of this paragraph may be illustrated by the following example:

Example. A surviving spouse elects to receive all of the life insurance proceeds with respect to one insured, amounting to $150,000 in ten annual installments of $16,500 each, based on a certain guaranteed interest rate. The prorated amount is $15,000 ($150,000÷10). As the second payment, the insurer pays $17,850, which exceeds the guaranteed payment by $1,350 as the result of earnings of the insurer in excess of those required to pay the guaranteed installments. The surviving spouse shall include $1,850 in gross income and exclude $16,000—determined in the following manner:

Fixed payment (including guaranteed interest)	16, 500
Excess interest	1, 350
Total payment	17, 850
Prorated amount	15, 000
Excess over prorated amount	2, 850
Annual excess over prorated amount excludable under section 101 (d) (1) (B)	1, 000
Amount includible in gross income	1, 850

(b) *Amount held by an insurer.* For the purpose of the proration referred to in section 101 (d) (1) (A), an "amount held by an insurer with respect to any beneficiary" means an amount equal to the present value to such beneficiary (as of the date of death of the insured) of an agreement by the insurer under an insurance policy (whether as an option or otherwise) to pay such beneficiary an amount or amounts at a date or dates later than the death of the insured (section 101 (d) (2)). The present value of such agreement is to be computed as if the agreement under the life insurance policy had been entered into on the date of death of the insured, except that such value shall be determined by discounting the amount or amounts to be later paid on the basis of the same mortality tables and interest rate as used by the insurer in calculating payments to be made to the beneficiary under such agreement. See paragraph (c) of this section for detailed provisions governing computation of the "amount held by an insurer."

(c) *Method of computation.* (1) If proceeds of life insurance are paid to a beneficiary in installments, that portion of each installment which does not exceed the prorated portion of an "amount held by an insurer" with respect to such beneficiary at the time of the insured's death is excludable from the recipient's gross income. The "amount held by the insurer" is to be prorated over the period or periods with respect to which the payments are to be made. Thus, where an insurance policy provides for payment to the beneficiary at the death of the insured of $75,000 in a lump sum, but an option is selected by the beneficiary for the payment of 10 equal installments of $8,750 per year, the excludable portion of each installment is $7,500 ($75,000÷10) and the amount of each installment to be included in gross income is $1,250.00 ($8,750 minus $7,500.00). However, if the beneficiary is the insured's surviving spouse, the further exclusion of $1,000 is allowed for each taxable year of receipt and the amount to be included in gross income is $250 in any year in which only a single payment is received. In every case in which the contract provides for an option to take the proceeds of the policy in a lump sum at the time of the insured's death (whether such option was exercisable by the insured, by the beneficiary, or by either) such lump sum shall be considered the "amount held by an insurer." If the payments are to be made over a fixed period, such amounts shall be prorated as set forth in the example above. If, however, installment payments to continue during the life of the beneficiary are elected, the exclusion will be determined by dividing the lump sum figure by the life expectancy in years of the beneficiary concerned. Such life expectancy shall be determined in accordance with the tables prescribed in § 1.72–9, relating to annuities.

(2) If the insurance policy has no provision for the payment of a particular amount immediately upon the death of the insured, but periodic payments to one or more beneficiaries are to be paid under it, the "amount held by the insurer" is determined by finding the present value (with respect to each beneficiary under a particular policy) of the agreement, as of the date of death of the insured, by discounting the payments to be made on the basis of the same interest rate and mortality table as used by the insurer in determining the payments to be made to the beneficiary under such agreement. Thus, if a contract provides merely for the payment of $5,000 per year to the surviving spouse during her life, the present value of such agreement is determined by application of the prescribed interest rate and mortality tables. If such value is $60,000 and if the life expectancy of the beneficiary is determined under section 72 and § 1.72–9 to be 20 years, $3,000 of each $5,000 payment ($60,000 divided by 20) is excludable as the prorated portion of the "amount held by the insurer". For each taxable year in which a payment is made, an additional $1,000 is excludable from the gross income of the surviving spouse. Hence, if she receives only one $5,000 payment in her taxable year, only $1,000 is includible in her gross income in that year with respect to such payment ($5,000 minus the total amount excludable, $4,000). If the policy provides, in addition to the annuity for the surviving spouse, for payments of $2,000 per year for 10 years to the daughter of the insured, the present value of such agreement is to be computed separately for purposes of determining the excludable portion of each payment to the daughter. If such value is $15,000, then $1,500 of each $2,000 payment ($15,000÷10) is excludable as the prorated portion of the amount held by the insurer, and the remaining $500 shall be included in the gross income of the daughter. If the "amount held by an insurer" with respect to a beneficiary cannot be determined except by reference to the beneficiary's life expectancy, the value of any refund feature to a subsequent beneficiary or the estate of the insured shall be disregarded in determining the "amount held by an insurer." Such refund, when received, is excludable from the income of the recipient.

(3) If proceeds of a life insurance policy are paid to a beneficiary other than as an annuity (as defined in § 1.72–2 (b)), but such proceeds are not paid until a date subsequent to the date of the insured's death, the total amount excludable from the gross income of the recipient under section 101 (d) shall not exceed the "amount held by an insurer" at the date of the insured's death. Such amount shall be either—

(i) The lump sum, if any, payable to the beneficiary at the date of the insured's death, or

(ii) In the case of an insurance policy which has no provision for the payment of a lump sum immediately upon the death of the insured, the sum ascertained by discounting the amount of the proceeds of the policy to the date of the insured's death on the basis of the interest rate used by the insurer in determining such amount.

However, in the case of a surviving spouse, $1,000 shall be added (for each taxable year of the surviving spouse in which an amount is received other than as an annuity) to amounts determined under subdivision (i) or (ii) of this subparagraph.

(4) The amounts excludable from gross income as the result of the prorating of an "amount held by an insurer" in accordance with the provisions of this paragraph shall be excludable from the gross income of the recipient without regard to the taxable year of the recipient in which they are actually received. However, the additional exclusion provided with respect to a surviving spouse under section 101 (d) (1) (B) and the provisions of this paragraph cannot exceed $1,000 for any taxable year of the recipient despite the number of payments actually received in such year or the number of contracts of life insurance under which such payments are

received with respect to a particular insured.

(d) *Limitations on application of section 101 (d).* Section 101 (d) is inapplicable to interest payments on any amount held by an insurer under an agreement to pay interest thereon (see sections 101 (c) and 101 (d) (4), and § 1.101-3).

§ 1.101-5 *Alimony, etc., payments.* Proceeds of life insurance policies paid by reason of the death of the insured to his separated wife, or payments excludable as death benefits under section 101 (b) paid to a deceased employee's separated wife, if paid to discharge legal obligations imposed by a decree of divorce or separate maintenance, by a written separation agreement executed after August 16, 1954, or by a decree of support entered after March 1, 1954, shall be included in the gross income of the separated wife if section 71 or 682 is applicable to the payments made. For definition of "wife", see section 7701 (a) (17) and the regulations thereunder.

§ 1.101-6 *Effective date.* (a) The provisions of section 101 and §§ 1.101-1, 1.101-2, 1.101-3, 1.101-4, and 1.101-5 are applicable only with respect to amounts received by reason of the death of an insured or an employee occurring after August 16, 1954. In the case of such amounts, these sections are applicable even though the receipt of such amounts occurred in a taxable year beginning before January 1, 1954, to which the Internal Revenue Code of 1939 applies.

(b) Section 22 (b) (1) of the Internal Revenue Code of 1939 and the regulations pertaining thereto shall apply to amounts received by reason of the death of an insured or an employee occurring before August 17, 1954, regardless of the date of receipt.

[F. R. Doc. 55-8129; Filed, Oct. 6, 1955; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

FROZEN PLUMS

U. S. STANDARDS FOR GRADES[1]

Notice is hereby given that the United States Department of Agriculture is considering the issuance of United States Standards for Grades of Frozen Plums pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., 7 U. S. C. 1621 et seq.). This issuance, if made effective, will be the first issue by the Department of grade standards for this product.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D. C., not later than 60 days after publication hereof in the FEDERAL REGISTER.

The proposed standards are as follows:

PRODUCT DESCRIPTION, COLOR TYPES, STYLES, AND GRADES

Sec.
52.2911 Product description.
52.2912 Color types of frozen plums.
52.2913 Styles of frozen plums.
52.2914 Grades of frozen plums.

FACTORS OF QUALITY

52.2915 Ascertaining the grade.
52.2916 Ascertaining the rating for the factors which are scored.
52.2917 Color.
52.2918 Size.
52.2919 Defects.
52.2920 Character.

LOT CERTIFICATION TOLERANCES

52.2921 Tolerances for certification of officially drawn samples.

SCORE SHEET

52.2922 Score sheet for frozen plums.

AUTHORITY: §§ 52.2911 to 52.2922 issued under sec. 205, 60 Stat. 1090, 7 U. S. C. 1624.

PRODUCT DESCRIPTION, COLOR TYPES, STYLES, AND GRADES

§ 52.2911 *Product description.* Frozen plums means the frozen product prepared from clean, sound, fresh fruit of any commercial varieties of plums; which are: sorted, washed, and pitted; properly drained before filling into containers; may be packed with or without the addition of a nutritive sweetening ingredient; and are frozen in accordance with good commercial practice and maintained at temperatures necessary for the preservation of the product.

§ 52.2912 *Color types of frozen plums.* (a) Purple or Blue (such as Italian Prune Plum).

(b) Red (such as Satsuma or Santa Rose).

(c) Yellow-Green (such as Yellow Egg and Green Gage).

§ 52.2913 *Styles of frozen plums.* (a) "Halved" means frozen plums that have been prepared by cutting whole plums longitudinally into approximate halves.

(b) "Whole" means frozen plums that have been prepared from whole plums in a manner that the plums are not crushed, mutilated, or broken in removing the pits.

(c) "Crushed and broken" (machine pitted) means frozen plums that have been prepared from whole plums in a manner that most of the plums are crushed, mutilated, or broken in removing the pits.

§ 52.2914 *Grades of frozen plums.* (a) "U. S. Grade A" or "U. S. Fancy" is the quality of frozen plums that possess similar varietal characteristics; that possess a normal flavor; that possess a good color; that are practically uniform in size; that are practically free from defects; that possess a good character; and that score not less than 90 points when scored in accordance with the scoring system outlined in this subpart: *Provided,* That frozen plums may be only reasonably uniform in size, if the total score is not less than 90 points.

(b) "U. S. Grade B" or "U. S. Choice" is the quality of frozen plums that possess similar varietal characteristics; that possess a normal flavor; that possess a reasonably good color; that are reasonably uniform in size; that are reasonably free from defects; that possess a reasonably good character; and that score not less than 80 points when scored in accordance with the scoring system outlined in this subpart: *Provided,* That the frozen plums may be only fairly uniform in size, if the total score is not less than 80 points.

(c) "U. S. Grade C" or "U. S. Standard" is the quality of frozen plums that possess similar varietal characteristics; that possess a normal flavor; that possess a fairly good color; that are fairly uniform in size; that are fairly free from defects; that possess a fairly good character; and that score not less than 70 points when scored in accordance with the scoring system outlined in this subpart.

(d) "Substandard" is the quality of frozen plums that fail to meet the requirements of U. S. Grade C or U. S. Standard.

FACTORS OF QUALITY

§ 52.2915 *Ascertaining the grade*—(a) *General.* The grade of frozen plums is determined immediately after thawing to the extent that the units may be separated easily and are free from ice crystals. In addition the grade of frozen plums is ascertained by examining the product and considering all of the grade requirements as follows:

(1) *Factors not rated by score points.*

(i) Varietal characteristics.

(ii) Flavor.

(2) *Factors rated by score points.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors:	*Points*
Color	25
Size	20
Defects	30
Character	25
Total score	100

(b) "Normal flavor" means that the product has a normal, characteristic flavor and odor for the varietal type and is free from objectionable flavors and objectionable odors of any kind.

§ 52.2916 *Ascertaining the rating for the factors which are scored.* The essential variations within each factor which is scored are so described that the value may be ascertained for such factors and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "22 to 25 points" means 22, 23, 24, or 25 points).

§ 52.2917 *Color*—(a) *(A) classification.* Frozen plums that possess a good color may be given a score of 22 to 25 points. "Good color" means that the frozen plums, internally and externally, possess a practically uniform, bright, typical color of well ripened, properly prepared, and properly processed frozen plums of similar varietal characteristics.

---

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

(b) (*B*) *classification.* Frozen plums that possess a reasonably good color may be given a score of 20 to 21 points. Frozen plums that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a limiting rule). "Reasonably good color" means that the frozen plums, internally and externally, possess a reasonably uniform, bright, typical color of reasonably well ripened, properly prepared, and properly processed frozen plums of similar varietal characteristics and that the units are practically free from any brown color due to oxidation, improper processing or other causes, which color may affect no more than slightly the appearance or edibility of the product.

(c) (*C*) *classification.* Frozen plums that possess a fairly good color may be given a score of 16 to 19 points. Frozen plums that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the frozen plums, internally and externally, may vary noticeably in typical color of fairly well ripened and properly processed frozen plums of similar varietal characteristics and that none of the units may possess discoloration due to oxidation or other causes that materially affects the appearance of the product.

(d) (*SStd*) *classification.* Frozen plums that fail to meet the requirements of paragraph (c) of this section may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2918 *Size* — (a) *General.* The factor of uniformity of size for crushed and broken frozen plums is not based on any detailed requirements and is not scored; the other three factors (color, defects, and character, as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) (*A*) *classification.* Halved or whole styles of frozen plums that are practically uniform in size may be given a score of 18 to 20 points. "Practically uniform in size" in halved or whole styles means that in 90 percent, by count, of the units which have the most uniform size, the weight of the largest unit does not exceed the weight of the smallest unit by more than 50 percent.

(c) (*B*) *classification.* Halved or whole styles of frozen plums that are reasonably uniform in size may be given a score of 16 to 17 points. "Reasonably uniform in size" in halved or whole styles means that in 90 percent, by count, of the units which have the most uniform size, the weight of the largest unit is not more than twice the weight of the smallest unit.

(d) (*C*) *classification.* Halved or whole styles of frozen plums that are fairly uniform in size may be given a score of 14 or 15 points. "Fairly uniform in size" in halved or whole styles means that the frozen plums may be variable in size but not to the extent that the appearance is seriously affected.

(e) (*SStd*) *classification.* Halved or whole styles of frozen plums that fail to meet the requirements of paragraph (d) of this section may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2919 *Defects*—(a) *General.* The factor of defects refers to the degree of freedom from: harmless extraneous matter; units that are crushed or broken with respect to halved and whole styles; pits or pit material; damaged and seriously damaged units; and any other defects which detract from the appearance and eating quality of the product.

(1) "Harmless extraneous matter" means any vegetable substance (including, but not limited to, a leaf, stem, or portions thereof) that is harmless.

(2) "Crushed or broken unit" means a unit in halved or whole styles that is torn, ragged or otherwise mutilated to the extent that the unit does not retain its formal shape. In halved style, halves of plums that are slightly split are not considered crushed or broken. In whole style, plums that are slit or perforated by the pitting operation are not considered crushed or broken unless the unit is ragged or otherwise mutilated to the extent that the appearance of the unit does not have the approximate shape of a whole pitted plum.

(3) A "pit or pit material" means any whole pit or any piece of pit material regardless of size.

(4) "Damaged unit" means any unit possessing injury which singly or in the aggregate on a unit, or in a unit, materially affects the appearance and eating quality of the unit and includes, but is not limited to:

(i) Surface areas blemished by sunburn, scab, or other serious discoloration having an aggregate area exceeding that of a circle ¼ inch in diameter and not extending into the fruit tissue;

(ii) Areas blemished by sunburn, scab, or other serious discoloration extending into the fruit tissue so that the flesh is materially discolored or toughened;

(iii) Abnormalities, such as growth cracks which materially affect the appearance of the unit and "doubles," ("shriveled" areas are not considered abnormalities).

(5) "Seriously damaged unit" is any unit possessing injury which singly or in the aggregate on a unit, or in a unit, seriously affects the appearance and eating quality of the unit.

(b) (*A*) *classification.* Frozen plums that are practically free from defects may be given a score of 27 to 30 points. "Practically free from defects" means that, individually and collectively, harmless extraneous matter; crushed and broken units with respect to halved and whole styles; pits and pit material; damaged and seriously damaged units; and other defects do not more than slightly affect the appearance and eating quality of the product; and that there may be present:

(1) Not more than 5 percent, by weight, of crushed or broken units in halved and whole styles;

(2) Not more than 10 percent, by weight, of damaged and seriously damaged units: *Provided,* That not more than 5 percent, by weight, of all the units may be seriously damaged; and

(3) Not more than 1 piece of pit per 30 ounces or 1 whole pit per 100 ounces of net contents.

(c) (*B*) *classification.* Frozen plums that are reasonably free from defects may be given a score of 24 to 26 points. Frozen plums that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that, individually and collectively, harmless extraneous matter; crushed and broken units with respect to halved and whole styles; pits and pit material; damaged and seriously damaged units; and other defects do not more than slightly affect the appearance and eating quality of the product; and that there may be present:

(1) Not more than 10 percent, by weight, of crushed or broken units in halved and whole styles;

(2) Not more than 15 percent, by weight, of damaged and seriously damaged units: *Provided,* That not more than 8 percent, by weight, of all the units may be seriously damaged; and

(3) Not more than 1 piece of pit per 30 ounces or 1 whole pit per 100 ounces of net contents.

(d) (*C*) *classification.* Frozen plums that are fairly free from defects may be given a score of 21 to 25 points. Frozen plums that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that, individually and collectively, harmless extraneous matter; crushed and broken units with respect to halved and whole styles; pits and pit material; damaged and seriously damaged units; and other defects do not more than slightly affect the appearance and eating quality of the product; and that there may be present:

(1) Not more than 20 percent, by weight, of crushed or broken units in halved and whole styles;

(2) Not more than 20 percent, by weight, of damaged and seriously damaged units: *Provided,* That not more than 12 percent, by weight, of all the units may be seriously damaged; and

(3) Not more than 1 piece of pit per 30 ounces or 1 whole pit per 100 ounces of net contents.

(e) (*SStd*) *classification.* Frozen plums that fail to meet the requirements of paragraph (d) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.2920 *Character* — (a) *General.* The factor of character refers to the degree of ripeness, the texture and tenderness of the frozen plums, and to shriveled areas of skin.

(b) *(A) classification.* Frozen plums that possess a good character may be given a score of 23 to 25 points. "Good character" means that the units possess a tender, fleshy texture, typical of well ripened, properly processed frozen plums; and that not more than 10 percent, by weight, of the units may possess a reasonably good character or possess shriveled areas that do not materially affect the appearance of the unit.

(c) *(B) classification.* Frozen plums that possess a reasonably good character may be given a score of 20 to 22 points. Frozen plums that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a limiting rule). "Reasonably good character" means that the units possess the texture of reasonably well ripened frozen plums that are properly processed; the texture is reasonably fleshy and the units reasonably tender, or the tenderness may be variable from slightly soft to slightly firm; and that not more than 20 percent, by weight, of the units may possess a fairly good character or possess shriveled areas that do not materially affect the appearance of the unit.

(d) (C) *Classification.* Frozen plums that possess a fairly good character may be given a score of 17 to 19 points. Frozen plums that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good character" means that the units possess the texture of fairly well ripened, frozen plums that are properly processed, which may be variable in fleshiness but are fairly fleshy; the units may be soft or very firm, but not tough; and may possess shriveled areas that do not seriously affect the appearance of the frozen plums.

(e) *(SStd) classification.* Frozen plums that fail to meet the requirements of paragraph (d) of this section may be given a score of 0 to 16 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

LOT CERTIFICATION TOLERANCES

§ 52.2921 *Tolerances for certification of officially drawn samples.* (a) When certifying samples that have been officially drawn and which represent a specific lot of frozen plums, the grade for such lot will be determined by averaging the total score of the containers comprising the sample, if:

(1) All containers comprising the sample meet all applicable standards of quality promulgated under the Federal Food, Drug and Cosmetic Act and in effect at the time of the aforesaid certification; and

(2) Not more than one-sixth of the containers fails to meet the grade indicated by the average of such total scores;

(3) None of the containers falls more than 4 points below the minimum score for the grade indicated by the average of such total scores;

(4) None of the containers falls more than one grade below the grade indicated by the average of such total scores:

(5) The average score of all containers for any factor subject to a limiting rule is within the score range of that factor for the grade indicated by the average of such total scores of the containers comprising the sample.

SCORE SHEET

§ 52.2922 *Score sheet for frozen plums.*

Size and kind of container ---
Container mark or identification ---
Net weight (ounces) ---
Type ---
Style ---

Factors	Score points		
Color	25	(A)	22-25
		(B)	[1] 20-21
		(C)	[1] 16-19
		(SStd)	[1] 0-15
Size	20	(A)	18-20
		(B)	16-17
		(C)	14-15
		(SStd)	[1] 0-13
Defects	30	(A)	27-30
		(B)	[1] 24-26
		(C)	[1] 21-23
		(SStd)	[1] 0-20
Character	25	(A)	23-25
		(B)	[1] 20-22
		(C)	[1] 17-19
		(SStd)	[1] 0-16
Total score	100		

Normal flavor ---
Grade ---

[1] Indicates limiting rule.

Dated: October 4, 1955.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 55-8139; Filed, Oct. 6, 1955; 8:50 a. m.]

[7 CFR Part 911]

[Docket No. AO-262]

HANDLING OF MILK IN TEXAS PANHANDLE MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS THERETO WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order regulating the handling of milk in the Texas Panhandle marketing area, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Interested parties may file exceptions to this recommended decision with the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington, D. C., not later than the close of business on the 15th day after the publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. A public hearing on the record of which the recommended marketing agreement and order were formulated was called by the Agricultural Marketing Service, United States Department of Agriculture, following receipt of a petition filed by the Tri-State Milk Producers Association. The hearing was held at Amarillo, Texas, January 31–February 7 and April 12–13, 1955, pursuant to notice duly published in the FEDERAL REGISTER on January 8, 1955 (20 F. R. 198) and March 24, 1955 (20 F. R. 1785), respectively. The period until June 1, 1955, was allowed interested parties for the filing of briefs on the record.

The material issues of record related to:

1. Whether the handling of milk in the market is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

2. Whether marketing conditions justify the issuance of a marketing agreement or order; and

3. If an order is issued what its provisions should be with respect to:

(a) The scope of regulation;

(b) The classification of milk;

(c) The level and method of determining class prices;

(d) The method to be used in distributing proceeds to producers; and

(e) Administrative provisions.

Findings and conclusions. Upon the evidence adduced at the hearing and the record thereof, it is hereby found and concluded that:

1. *Character of commerce.* The handling of milk in the proposed marketing area is in the current of interstate commerce and directly burdens, obstructs or affects interstate commerce in milk and its products.

The marketing area specified in the proposed order, hereinafter referred to as the Texas Panhandle marketing area, includes all the territory in the counties of Armstrong, Briscoe, Carson, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, and Wheeler, all in the State of Texas. Milk handled in the marketing area moves in large volumes and in many forms back and forth over State lines. The production areas from which milk is received by the various handlers who distribute milk in the marketing area overlap State boundaries. Milk from the farms of many producers in Oklahoma and New Mexico is received at plants in the marketing area where it is processed and packaged for distribution to consumers. From a country station at Arnett, Oklahoma, milk received from producers is moved regularly to a milk plant at Amarillo, Texas, from which plant it is distributed for fluid consumption throughout the marketing area and in Oklahoma. During those months in recent years when producer deliveries were inadequate for the needs of the market, milk for fluid distribution in the marketing area was purchased by handlers in tank lots from plants in Oklahoma, Missouri, Wisconsin, and Illinois.

Handlers operating plants located in the marketing area are the principal distributors in the market. From several of such plants, distribution of Grade A milk for fluid consumption in New Mexico and Oklahoma represents a significant portion of their business. Routes emanating from Elk City, Oklahoma, deliver substantial quantities of milk in the marketing area. In addition, deliveries are made regularly at some localities in the marketing area from a plant in Dodge City, Kansas.

Manufactured milk products made from excess milk in the plants of handlers, or at plants to which it has been transferred or diverted, are sold throughout various southwestern States. A principal outlet for Grade A milk received from producers which is in excess of that needed for fluid use is the Quint County Creamery at Mangum, Oklahoma. During the months of heavy production large quantities of milk are transferred or diverted by marketing area handlers to the Quint County plant. In addition to processing and packaging milk for fluid distribution in the nearby Texas and Oklahoma communities, a variety of manufactured dairy products which are moved in interstate commerce is made at this plant.

Routes of handlers under the Central West Texas and Southwest Kansas Federal milk marketing orders extend into the proposed marketing area, where milk is sold in competition with distributors who would be handlers under the Texas Panhandle order. At the plants of these handlers who are regulated by other Federal orders the interstate commerce factor is indicated by the receipts of milk from and distribution to locations outside the State of Texas.

2. *Need for an order.* Marketing conditions in the Texas Panhandle marketing area justify the issuance of a marketing agreement and order.

There is no overall plan whereby farmers supplying the Texas Panhandle marketing area are assured of payment for their milk in accordance with its use. Neither is there a procedure whereby farmers may participate in the price determinations throughout the area necessary for the marketing of their milk, which because of its perishability must be delivered to the market soon after it is produced. Farmers cannot retain milk on their farms in order to await favorable price conditions. Production of milk for fluid use, under the sanitary requirements prevailing in the proposed marketing area, requires substantial investment.

A certain amount of reserve milk in excess of actual trade sales is necessary to assure consumers of an adequate supply of milk at all times. Fluctuations brought on by the seasonal nature of milk production, coupled with a relatively uniform pattern of consumption, necessitate the disposition of some of the Grade A milk produced for the market into manufacturing channels. Such excess milk must be manufactured into products and sold in competition with similar products produced from ungraded milk. Milk marketed in this manner returns considerably less than that marketed for fluid use. Consequently, a well-defined and uniformly applied plan of use classification and the proper pricing of milk in such uses is necessary to prevent such excess milk from depressing the market price of all Grade A milk. To be successful, the classification of milk in accordance with its use and the payments to producers on a use basis, require full participation and cooperation of those engaged in the industry.

Orderly marketing of the milk produced for fluid consumption requires uniformly dependable methods for determining prices according to the use made of the milk. It also requires uniformity of pricing according to the use made of milk by each handler, and a means whereby lower average returns resulting from the maintenance of the necessary reserve supplies of milk may be shared equitably among producers.

The problems of unstable marketing encountered by producers in the Texas Panhandle marketing area are not uncommon in fluid milk markets. The problems, which have resulted in unrest and instability in this area, are similar to those characteristic of the fluid milk industry in the absence of regulation or a well-defined classified pricing plan. A marketing order as herein proposed will promote orderly marketing by assuring producers prices equivalent to those contemplated under the act.

The buying practices of various handlers in the market have caused chaotic conditions and instability in the marketing of milk. Prices paid farmers for milk for fluid use have frequently been below the Class I prices an order would provide. Producers have no means of ascertaining how their milk is utilized at the various plants to which they deliver, or whether the basis on which they are being paid from month to month will be revised. Accuracy of weights and butterfat tests have been ascertained infrequently. Payment of surplus prices by handlers for milk which producers believe was needed in the market for fluid consumption is one of the causes of instability and uncertainty in the market.

Several handlers in the area have dealt with farmers in such a way as to discourage cooperative action by these farmers. Some handlers refused to make deductions for cooperative dues from payments due member producers, even though such deductions had been properly authorized by the producers. Failure to make such deductions has limited the cooperative in instituting check weighing and testing programs.

Representatives of the principal producer cooperative association stated that major handlers in the market have refused or failed to recognize or to bargain with the association as to price, or any other terms with respect to the sale of the milk of its members. Some handlers in the area used various means to attempt to deter producers from affiliating with the cooperative association. They advised producers that they preferred to deal with them individually and in some instances indicated that preferential treatment would be given those producers who did not become members of the cooperative. Activity by producers in behalf of the cooperative association was looked upon with disfavor by handlers. A producer who was active in the soliciting of new members for the association was cut off by the handler to whom he was making deliveries because "his milk did not come up to the company's standards." Information from the Health Department indicated that it had never ordered the producer cut off or degraded and that the bacteria count of his milk was rarely over 5,000.

Producers contended that their milk is frequently rejected by handlers when such rejection is not warranted. It was stated that milk was rejected by a handler as being off flavor only when such handler had an excess supply of milk in his plant. Producers were further aggravated by the fact that a red coloring was added by the handler to rejected milk before it was returned to the producer, thus destroying the value such producer might realize from the sale of such rejected milk at a manufacturing plant.

Evidence adduced at the hearing indicated that the rates charged a large number of producers in the market by handlers for hauling are considerably greater than the actual cost of transporting such producers' milk from their farms to the handlers' plants. This has caused considerable dissatisfaction among producers, and has resulted in unjustly depressing producer returns. One producer, who complained that a rate of 95 cents per hundredweight was being deducted from his pay check for hauling for which the hauler was paid 75 cents per hundredweight, was advised by the handler to find another market for his milk if he was not satisfied.

Producers whose milk is received at a country plant at Arnett, Oklahoma (150 to 155 miles from Amarillo) are charged 75 cents per hundredweight by the handler for moving their milk to Amarillo in his tank truck. This 75-cent charge is in addition to the hauling cost, from their farms to the country plant, which cost is as high as 50 cents per hundredweight for some producers. When milk from the Arnett plant is not needed in the handler's Amarillo plant for Class I purposes it is usually moved to the ungraded portion of the handler's plant in Arnett for manufacturing purposes. Under such circumstances, producers are still charged a 75-cent assessment for hauling, the same as though the milk had been moved to Amarillo. Producers at the hearing contended that the 75-cent hauling charge to Amarillo which they are required to pay the handler on all their deliveries is unwarranted in that it exceeds by a wide margin the actual costs incurred in moving producer milk after it has been received at Arnett, even if all such milk were moved to Amarillo. Producers claimed that an order with appropriate pricing and location differential provisions would tend to correct such inequities as they contend have resulted from the various hauling charge arrangements which now prevail in the market.

The stated base and excess prices paid producers are generally at the option of the handler and not meaningful. Since no complete systematic verification is made of the way milk is utilized, payment to a producer at the excess, or surplus price, for any of his milk does not indicate that such milk was not used for fluid purposes. It was testified that arbitrary methods have been used in some instances in arriving at the percentages of milk to be paid for at the base and excess prices. Most handlers deal with their producers on an individual basis so that it is difficult for producers to ascertain the overall basis used in determining the rate of payment for their deliveries.

The conditions complained of by producers, and herein cited, with regard to the unstable marketing conditions are not peculiar to one or several localities in the marketing area, but apply throughout the area. Moreover, those handlers who would be regulated by the attached order compete with one handler throughout the area.

The record indicates that there is a lack of detailed market information relative to the procurement of milk for and disposition of milk throughout the marketing area. Such information is essential to the effectuation of orderly marketing and in achieving a level of Grade A milk production commensurate with consumer demand for Grade A milk. Some data on receipts and utilization of milk for fluid and manufacturing uses were made available for the hearing by various handlers. This information is incomplete with regard to the overall receipts and utilization of milk and milk products by all handlers operating in the area, and it, therefore, does not portray marketing conditions for the whole area.

It is concluded that the issuance of a marketing agreement and order for the Texas Panhandle marketing area would contribute substantially to the improvement of many of the conditions complained of and would tend to effectuate the declared policy of the act. The adoption of a classified price plan based on the audited utilization of handlers will provide a uniform system of minimum prices to handlers for milk purchased from producers and a fair division among all producers of the proceeds from the sale of this milk. The public hearing procedure required by the Agricultural Marketing Agreement Act will provide opportunity for representation of producers, handlers and the public in presenting information on marketing conditions and participating in the determination of prices for milk in the area.

3. (a) *Scope of regulation.* It is necessary to designate clearly what milk and what persons would be subject to the various provisions of the order. This can best be done by providing definitions which set forth the categories of persons, plants and milk products for purposes of classification of milk and of application of other provisions of the order.

Marketing area. The marketing area should include all the territory within the counties of Armstrong, Briscoe, Carson, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman and Wheeler, all in the State of Texas.

According to the 1950 census, the population of the 20 counties which constitute the proposed marketing area was approximately 250,000. It was indicated at the hearing that since 1950 there has been a substantial overall increase in population throughout the area. Because a relatively large portion of the sales of fluid milk in this area is in rural communities and because of the substantial population immediately surrounding the various cities, the marketing area should be defined on the basis of county rather than city boundaries. To a large extent, health ordinances in effect in this area apply to both the county and the cities and towns therein.

Grade A milk products sold for fluid consumption throughout the proposed 20-county area must be approved by health authorities who are governed by health ordinances, practices and procedures patterned after the United States Public Health Milk Ordinance and Code. Movements of milk both in bulk and packaged form between cities and counties take place through reciprocal approval of the respective health authorities. Ratings by the United States Public Health Service are recognized as a basis for approval of outside sources of milk. The degree of similarity of minimum health standards throughout the area justifies uniform regulation for milk marketed throughout the area.

Amarillo, which is centrally located with respect to the marketing area is the largest city in the area. Its 1950 population was 74 thousand and that for the next largest cities—Borger and Pampa—was 18 and 17 thousand, respectively. All of these cities have substantial populations surrounding their boundaries. Amarillo is the principal point at which milk from producers is processed and packaged for distribution throughout the marketing area. The four handlers whose plants are located in Amarillo receive milk from approximately three-fourths of the estimated 500 producers supplying handlers who would be regulated by the proposed order. From these plants in Amarillo, milk is distributed on routes in each of the 20 counties in the marketing area. Three other plants in the marketing area which would be fully regulated by the order and sell milk in competition principally with Amarillo handlers are located in Borger, Pampa, and Herford. A distributor whose plant is located at Elk City, Oklahoma, distributes milk in the proposed marketing area in competition with a number of the aforementioned handlers and it is likely that milk at this plant would be fully subject to the order. Except for a relatively small volume of milk which is sold in a few counties on the outer edges of the marketing area by other plants located outside of the area, all milk distributed in the marketing area would be fully subject to the order.

The marketing area which was suggested in the proposals submitted by various parties to the hearing included, in the aggregate, 51 counties (40 in Texas, 6 in New Mexico and 5 in Oklahoma), an area of more than 53,000 square miles. A preliminary investigation and examination of the available data relative to the supply of milk for and the distribution throughout the overall area indicated that the intent of the act would be best effectuated by limiting consideration at that time to an order in which the marketing area was defined as not greater than the territory within Potter County and the cities of Borger and Pampa, Texas. The hearing notice which was issued to that effect also provided that if evidence adduced at the hearing indicated that it would not be feasible to promulgate an order for that limited area or that additional territory should properly be included under any proposed order for the Texas Panhandle area the hearing would be reopened for the purpose of giving further consideration to an appropriate marketing area. The hearing was convened on January 31 and continued through February 7, 1955. On the basis of evidence presented at that time, however, it was evident that it would not be feasible to promulgate an order with a marketing area limited to Potter County and the cities of Borger and Pampa. Accordingly, the hearing was reopened on April 12 to afford interested parties the opportunity to submit additional evidence with respect to the marketing area and other provisions of a proposed order. For the purpose of the reopened hearing, consideration was given to a marketing area composed of all the territory within 28 counties, including in addition to the 20 herein designated as the marketing area, the counties of Castro, Childress, Collingsworth, Cottle, Hale, Lipscomb, Parmer and Swisher.

It is neither administratively feasible nor necessary to include all territory in the marketing area in which handlers to be regulated distribute milk. Furthermore, it would not be possible to designate a marketing area of reasonable size which would include all sales outlets of each and every handler that would be subject to regulation. As additional territory would be added, the problems associated with the extension of regulation to distributors that make a substantial portion of their fluid milk sales outside of the marketing area would be increased many fold. Difficulties would be encountered also in the pooling of returns from milk which is only remotely associated with the market. It is necessary, therefore, to define an area which in conjunction with other order provisions will promote orderly marketing of milk of those producers which should be priced and pooled under the order.

The counties of Cottle, Childress, Collingsworth, and Lipscomb, which append to the east and south of the proposed area, and which some handlers urged be a part of the marketing area, are not included in the marketing area herein recommended. The population of these counties is relatively small. There is only one city in these counties of more than 4,000 people (Childress—population 7,600). In Lipscomb, Childress, and Cottle Counties, a portion of the milk sold is already subject to regulation under other Federal orders.

Sufficient milk is sold in Collingsworth and Childress Counties from a distant plant in Oklahoma to extend the regulation to this milk if these counties were included in the marketing area. To do so would extend unnecessarily the scope of the regulation. This would result in the pooling under the order of milk which is not primarily associated with the principal market outlets of the Texas Panhandle area. The main competition for sales outlets of a major portion of the milk at this plant would not be subject to regulation.

The counties of Hale, Swisher, Castro and Parmer, which attach to the south of the proposed marketing area were also considered for inclusion therein. According to the 1950 census, these counties had populations of 28.2, 8.2, 5.4 and 5.8 thousand, respectively. Total sales by Amarillo handlers in this four-county area are about 40 percent of the fluid milk distributed in such area. The percentages of the total distribution by Amarillo handlers is 20 percent in Hale, 65 in Castro and 80 percent in each Swisher and Parmer Counties. This is in contrast to the 20 counties recommended wherein handlers who would be regulated by the proposed order are essentially the only distributors who furnish milk to them.

Plainview (population 14,000), the principal city in Hale County, is 76 miles south of Amarillo and 46 miles north of Lubbock, Tex. Relatively small quantities of milk are distributed in Hale County by Amarillo handlers. The major distributor in Hale County, whose plant is in Plainview, also disposes of significant quantities of milk throughout Swisher and Castro Counties. The largest urban area included in the sales territory of the Plainview distributor is the city of Lubbock (72,000 population). The primary competition of the Plainview distributor, therefore, is not from Amarillo handlers but from Lubbock distributors who in turn distribute no milk in the proposed 20-county marketing area. This is true, not only throughout Lubbock and Hale Counties but also in the less populous counties adjacent to them. Hale County, geographically and from the viewpoint of milk distribution, is more closely associated with the Lubbock area than that of Amarillo.

Historically, prices paid producers at Plainview and Lubbock plants for base milk have been above those paid by Amarillo handlers. At the time of the hearing, the Plainview distributor was paying dairy farmers $5.83 per hundredweight for milk of 4 percent butterfat content compared to $5.55 and $5.58 paid by the two major Amarillo handlers. The comparable price paid to their dairy farmers by Lubbock distributors was $6.05. As stated below in this decision, the average Class I price pursuant to the proposed order for the Texas Panhandle area would have averaged $5.55 per hundredweight for the year of 1954. Although Swisher and Castro Counties are about equi-distant from Amarillo and Lubbock, it is concluded that it is unnecessary to include them in the proposed marketing area at this time. To incorporate these counties in the proposed marketing area would result in extending regulations to the Plainview distributor who operates primarily in the orbit of the Lubbock distribution area.

Parmer County which lies between Castro County and the eastern border of New Mexico was considered for inclusion in the marketing area. Milk is distributed in the county by distributors from nearby Clovis and Portales, New Mexico. Prices reported to have been paid by these New Mexico distributors have been higher historically than prices paid by Amarillo handlers. At the time of the hearing, the base price paid by such distributors for milk of 4 percent butterfat content was $5.77 per hundredweight. Marketing conditions in Parmer County are similar to those described above for Swisher and Castro Counties and, therefore, should not be included in the marketing area.

It was not shown on the record that the inclusion of Hale, Swisher, Castro, and Parmer Counties in the marketing area is necessary to effectuate orderly marketing conditions in the proposed Texas Panhandle marketing area at this time. The record does not indicate that unregulated handlers operating in these counties adjacent to the marketing area would have a price advantage in the procurement of milk over regulated handlers who dispose of milk in this area. In addition, by providing for a marketing area as proposed herein, the extension of regulation to milk distributors located outside of the marketing area is at a minimum and their operation will not be disturbed with respect to the major portion of their sales area wherein they compete with other distributors who would not be regulated by the proposed order.

Certain handlers testified that they distribute Class I milk in other counties in addition to those proposed to be included in the marketing area. Extension of regulation to those counties and the numerous other counties which had been suggested would bring additional handlers under regulations who in turn have important other sales which would be unregulated. The volume of milk sold outside the marketing area from pool plants as defined under the proposed order is not in itself justification for the inclusion of these counties in the marketing area, nor are marketing conditions in these counties such that their exclusion would be inappropriate or unjustified at this time.

The handlers who would be regulated pursuant to the attached order are in competition throughout the marketing area. The various communities throughout the marketing area in which milk is distributed are closely related marketwise. Uniform regulations through the device of a marketing order wil promote orderly and stable marketing conditions throughout the proposed area.

Definition of plants. The minimum class prices of the order should apply to that milk eligible for distribution as Grade A milk in the marketing area which is received from dairy farmers at plants primarily engaged in supplying fluid milk products for sale on retail and wholesale routes in the marketing area. Such plants would be defined as "pool plants."

Determining which plants shall be pool plants under the order, and thereby fully subject to regulation, requires that definitive standards be prescribed. Such standards should be clearly set forth in the order and apply uniformly to all plants, wherever located. Pool plant status should not be determined solely on an occasional shipment of milk to the market, or on approval by a specified health authority. Such a method for determining which plants shall be subject to regulation would not provide a workable basis for administering an order for the Texas Panhandle marketing area. In order to effectuate the intent of the act, it is concluded that pool plant status under the order should be determined on the basis of specified performance standards.

As indicated elsewhere in this decision, marketwide pooling of producer returns is considered essential to the stable and orderly functioning of this market. Since a marketwide pool results in payment to all producers on an average utilization for the market, individual handlers are relieved of any responsibility for maintaining a high Class I utilization in order to support their pay rates to producers. Whatever utilization of milk a handler may have, his rate of pay to producers will be the same as that of all other handlers in the market. Thus, it is possible that status with respect to the pool may become a determining factor in guiding a handler's operation.

The scope of pooling or the rules for distributing the returns from Class I sales under the order must be such that the differentials over manufacturing milk values paid by users of Class I milk will serve the purpose for which they are intended. Class I milk prices of the order are fixed at a level which exceeds the value of the milk for manufacturing uses by stated amounts. This premium, or differential, over the manufactured milk price is essential as an incentive to producers for producing milk of the quality and volume required by the market. Extra costs are involved in meeting the sanitary requirements relative to the maintenance of a dairy herd for the production of Grade A milk and in providing milk during the fall and winter months when feed and housing costs are high. Extra costs are involved also on farms since milk for fluid use must be handled through sanitary utensils and facilities, refrigerated and marketed promptly.

The extra costs thus involved for Grade A or fluid milk producers must be borne by that share of the milk which is marketed as Class I milk. Excess or "surplus" milk, although an essential part of a fluid milk business, cannot be expected to return more to producers than a manufactured milk value. The only outlet for reserve milk not needed for fluid use is in the form of manufactured products. Such products must be marketed in competition with similar products made throughout the country.

Since the production of high quality milk involves extra expenses, it is important that the amount of milk produced under Grade A inspection be no more than the minimum necessary to provide the market with an adequate and dependable supply of quality milk. To encourage more than enough production of such milk would represent an economic waste, since the expenditures involved in producing Grade A milk not an essential part of the market supply would result in no extra value to consumers.

One of the primary problems, then, in setting up a marketwide pool is to establish rules which will provide for the sharing of Class I sales (Class I differentials) among the producers who are an essential and regular part of the milk supply for the marketing area.

Class I prices must first be set as nearly as possible at the minimum levels which will encourage the necessary amount of milk production and the resulting returns should be distributed in such a way as to assure the market of the maximum dependable supply of quality milk which can be obtained at these prices. In order to do this, provision is made that equalization of market sales should be only to plants meeting reasonable performance standards with respect to supplying their producer milk to the market.

Performance standards should apply uniformly to all plants. Any plant, regardless of its location, should have equal opportunity to comply with the standards and thereby to participate in the marketwide pool and have its producers share in the Class I sales of the market. Any producer who meets the necessary health department requirements should be permitted, under the order, to sell his milk to plants meeting the standards of qualification. Whether or not plants and producers choose to supply the Texas Panhandle market will depend on the economic circumstances with which they are confronted, such as prices, transportation costs, and alternative outlets.

Performance standards should be such that any plant which has as its major function the supplying of milk to the market would pool its sales and share in the marketwide equalization. On the other hand, plants only casually, or incidentally, associated with the market should not be subject to complete regulation, nor should they be permitted or required to equalize their sales with all handlers in the market. If a milk plant were to be permitted to share on a prorata basis the Class I utilization of the entire market without being genuinely associated with the market, then the premiums or differentials paid by users of Class I milk would be dissipated without accomplishing their intended purpose. If a plant were to be qualified and fully regulated merely by making a token shipment of milk or cream into the market for sale as Class I milk, then any milk plant which found itself in a position where it was selling a smaller share of its milk in Class I than the average for all regulated handlers might make such shipment and receive equalization payments from the pool. The only qualification such a plant would be required to meet would be compliance with the necessary health department standards.

The mere circumstance of having obtained health department approval, plus the token shipment of milk, is not sufficient justification for equalizing the sales of such plant with the market. There are many plants having milk of suitable quality for sale in the marketing area which are in no way, or are only incidentally, associated with the market. Different health authorities have jurisdiction in various parts of the marketing area. In the absence of performance standards, approval by any one of these authorities or reciprocal acceptance of permits by them would entitle a plant to participate in the equalization pool. A health officer gives his approval to a plant in terms of sanitary consideration. There is no reason to think that he would make his determination of approval only on the economic bases contemplated by the Agricultural Marketing Agreement Act of 1937. Consequently, the standards appropriate to the act for determining pool plant qualification must be set out in the order.

Since reserve milk is an essential part of any fluid milk business there will always be some excess milk in the plants of handlers supplying other markets This will be particularly true in the months of flush production. Plants selling primarily to other markets, or plants shipping milk on an opportunity basis to any market where supplies happen to be short, do not represent sources of milk on which the Texas Panhandle market may depend. If such plants were allowed to sell a token quantity of milk in the marketing area and pool their surplus whenever Class I outlets were not available to them, the result would be that such handler could gain an advantage in paying producers through receipt of equalization payments from the Texas Panhandle pool.

The Texas Panhandle market, however, would gain no advantage from the payment of equalization to such a handler. Such a distribution of equalization payments would, in fact, reduce the blend price to producers regularly supplying the market, thereby having an adverse effect on the milk supplies upon which the market depends. This could result in the need for higher Class I prices than would otherwise be required to supply the market adequately.

Performance standards must be flexible enough to allow a plant which is primarily associated with the market to maintain its association with the pool under the changing conditions which occur from year to year, and yet not permit the distribution of equalization payments to plants not part of the essential supply. The performance standards herein provided are such that these objectives should be accomplished.

Because of the difference in marketing practices and in demands for supply of milk from distributing plants as related to supply plants, two sets of performance standards have been provided. A "distributing plant" under the order would be defined as a plant in which milk is processed or packaged and from which any fluid milk product (as hereinafter defined) is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area. "Supply plant" would be defined to mean a plant (except a distributing plant) from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a distributing plant which is qualified as a pool plant.

In order to qualify as a pool plant, a distributing plant should be required to distribute at least 15 percent of its milk from producers and other pool plants during the month as Class I milk on retail or wholesale routes to outlets in the marketing area.

A distributing plant having more than 85 percent of its business outside the marketing area or in other outlets should not be considered as essentially associated with the market. It is not considered advisable to bring such a plant under full regulation because of the minor share of its business which is in the marketing area. Full regulation in such case would not be necessary to accomplish the purposes of the order, and might well place such plant at a competitive disadvantage in relation to its competitors in supplying the unregulated market.

Such a minimum is necessary also to avoid the possibility that a plant otherwise not associated with the market might qualify itself for equalization payments to its own advantage, and to the disadvantage of the market, by means of minor sales in the marketing area.

It is contemplated that only plants primarily engaged in route distributions of fluid milk products should be qualified as pool plants under this definition. In order to preserve this distinction, a further condition is placed on distributing plants that their total distribution of Class I milk on routes to wholesale or retail outlets, both inside and outside the marketing area, must amount to at least 50 percent of their receipts during the month of milk from dairy farmers and from other plants. Any plant which does not qualify on this basis should be deemed to be primarily a supply plant and its status under the pool should be judged by the standards applied to such plants.

Evidence in the record indicates that most plants doing business in the marketing area dispose of their milk in such a way as to exceed by a considerable margin the minimum performance standards necessary to qualify as pool plants. There may be plants supplying milk to the marketing area which would not qualify for pool status. Such plants would be subject to payments hereinafter discussed if they are not fully subject to regulation.

The performance standards for supply plants to qualify for pool plant status should reflect the fact that the Texas Panhandle market is a deficit market in that producer milk is not adequate on an annual basis for the needs of the market. Throughout most months of the year distributors in the market have needed all of the milk available from producers in order to keep their Class I outlets fully supplied. In order to assure that all the producer milk which is pooled with the market will be available for Class I, supply plant standards should be set at levels which require that the milk will be available. If conditions in the market should change so that Class I outlets are adequately supplied with producer milk and the percentage standards herein recommended are not necessary to assure the availability of such producer milk for Class I sales, the recommended standards should be subject to further review.

Under present circumstances it is concluded that a supply plant should dispose of at least 50 percent of its receipts of milk from dairy farmers in any month in the form of supplemental supplies of fluid milk products, as hereinafter defined, shipped to distributing plants in order to qualify for pool plant status. Unless more than half of the milk from such plant is disposed of in this manner, a supply plant should not under the present conditions in the Texas Panhandle market be considered as primarily associated with the regulated market.

It is recognized, however, that the demand for milk from supply plants may vary seasonally and will be greatest during the season of low production. For sustained periods during the months of flush production supplies of milk received at plants located in or near the marketing area may be sufficient to supply the Class I outlets. During this part of the year, it would be more economical to leave the most distant milk in the country for manufacture, and use local supplies for Class I use. The performance provisions should not force milk to be transported to distributing plants in the summertime where it must be manufactured in order to maintain the eligibility of supply plants to pool.

To avoid this, provision should be made whereby a supply plant may maintain pool plant status throughout the year if it supplies a substantial portion of its producer milk to distributing plants during the months when milk production tends to be lowest. The proposed standards require that a supply plant provide distributing plants with milk to the extent of 75 percent of its producer milk receipts during the months of September through November to maintain automatic pool status for the months of March through June.

Any distributing plant or supply plant which does not meet the standards for a pool plant should be required to file reports and submit to audits by the market administrator to verify the status of such plant.

Some handlers in the market receive milk from both Grade A and ungraded producers. Where such an operation takes place, it is generally the practice of the handler to maintain the ungraded operation physically apart from that of his Grade A operation. Several of the ungraded operations of such dual plants have historically been associated with the market as important outlets for reserve supplies of milk during the months of seasonally high production. These plants receive such reserve supplies not only from the Grade A operations of the handler operating such ungraded plants but also from other Grade A plants in the market. The handler who operates an ungraded plant which is in the adjoining or same building as his Grade A plant should not be restricted in the operation of his ungraded plant to any greater degree than the operator of any other ungraded plant. However, proper safeguards should be provided in the order to insure that the ungraded and graded portions of a plant operated by the same handler are maintained as separate entities. It is concluded therefore, that if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it should not be considered a part of a pool plant. However, if the graded and ungraded operations of a plant are not maintained separately, the entire operation of such plant would be considered as that of a pool plant, and all ungraded milk received at such plant would be considered as other source milk received at a pool plant.

Some milk that is distributed in the marketing area is from plants which are fully subject to the classification, pricing and pooling provisions of other Federal milk marketing orders. It is not necessary to extend full regulation under this order to such plants which dispose of a major portion of their receipts in another area and are subject to such regulation. To do so would subject such plants to duplicate regulation. However, in order that the market administrator may be fully apprised of the continuing status of such a plant, the operator thereof should, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

Handler. Handler should be defined as any person in his capacity as the operator of one or more distributing or supply plants. The definition should also include any cooperative association with respect to the milk from producers diverted for the account of such association from a pool plant to a nonpool plant.

The handler is the person who receives milk from producers and who is responsible for reporting receipts and utilization of milk and payment therefor. A cooperative association which markets the milk of its producer members may for short periods of time need to divert producers' milk from pool plants to nonpool plants. If the association is defined as a handler for such milk, even though it has no plant, the producers whose milk is so diverted will continue to receive the uniform prices under the order and their milk production will be available for fluid use when needed in the fall months or at other times.

In case a person operates more than one pool plant, he should be a handler with respect to the combined operation of such plants. If the handler operates a plant not associated with the regulatory market, he would not be a handler with respect to such plant.

Producer-handlers and operators of distributing plants and supply plants which do not qualify as pool plants should be considered handlers in order to require such persons to report to the market administrator as is needed to determine their status. With regard to distributing plants, which are nonpool plants, such reports also are necessary to determine the amount payable by the operator of such plant on unpriced milk distributed in the marketing area.

Producer. Producer should be defined as any person, other than a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority and such milk is received at a pool plant.

When producer milk is not needed in the market for Class I purposes, the movement of such milk to nonpool plants for manufacturing purposes should be facilitated. Allowing for unlimited diversion during those months when reserve supplies of milk are heaviest will contribute to this end. Unlimited diversion is neither necessary nor desirable during the other months of the year when milk of producers regularly associated with the market is needed to supply the Class I needs of the market. It is necessary, however, to provide for limited diversion during such months to enable handlers to divert producer milk on such occasions as weekends or holidays when the milk is not needed in the market for Class I purposes.

Provision should be made so that the milk of producers regularly received at a pool plant may be diverted for the account of a handler to a nonpool plant any day during the flush production months and on not more than 15 days during any other months and still retain producer milk status under the order. Diverted milk shall be deemed to have been received at the plant from which it was diverted.

Producer-handler. Producer-handler should be defined as any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers. The order is not intended to establish minimum prices for such operators, but they should be required to make reports to the market administrator. Such reports are necessary to make a determination as to whether the operator is a producer-handler and to facilitate accounting with respect to transfer of milk from other handlers.

Classification provisions of the proposed order should provide that any milk, skim milk, or cream transferred by a handler to a producer-handler will be Class I milk. Any supplemental supplies of milk which may be obtained from other handlers may, by virtue of the type of operation involved, be presumed to be needed by the producer-handler for fluid use and should be classified in the supplying handler's plant as Class I milk. A producer-handler may receive milk from other handlers and still maintain his status as a producer-handler.

Pursuant to the proposed order, any milk which a handler receives from a producer-handler would be other source milk and would, therefore, be allocated to the lowest class utilization at the pool plant(s) of a handler after the allocation of shrinkage on producer milk. Milk disposed of to another handler by a producer-handler must be presumed to be surplus to the operation of the producer-handler.

Fluid milk product. Fluid milk product should be defined as milk, skim milk, buttermilk, milk drinks, cream, or any mixture in fluid form of skim milk and cream (except storage cream, aerated products, eggnog, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers). The items designated as fluid milk products pursuant to this definition are those products which when disposed of by handlers are considered as Class I milk.

Other source milk. Other source milk should be defined as all skim milk and butterfat contained in fluid milk products utilized by the handler in his operations except milk received from producers and fluid milk products received from other pool plants. Thus, other source milk would represent skim milk and butterfat which may not be subject to the pricing provisions of this order. It will include all milk products from plants other than pool plants and all manufactured dairy products from any source which are reprocessed or converted into another product during the month. It will include those manufactured products from a plant's own production which are made and are reprocessed or converted into another product during the same or a later month.

(b) *Classification of milk.* Milk and milk products received by handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as either Class I milk or Class II milk.

Under an order, only producer milk is priced. Milk is received, however, at pool plants directly from producers, from other handlers and from other sources. Milk from all of these sources is intermingled in handlers' plants. It is necessary, therefore, to classify all receipts of milk to afford a means to establish the classification of producer milk and apply the classified price plan.

The products which should be included in Class I milk are those required by health authorities in the marketing area to be obtained from milk or milk products from approved "Grade A" sources. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products somewhat above the ungraded or manufacturing milk price. This higher price should be at such a level that it will yield a blend price to producers that will encourage production of enough milk to meet market needs.

Excess milk not needed seasonally or at other times for Class I use must be disposed of for manufactured products. These products are less perishable and must be sold in competition with products made from ungraded milk. Milk so used should be classified as Class II milk and priced in accordance with its value in such outlets.

In accordance with these standards, Class I milk should comprise all skim milk (including concentrated and reconstituted skim milk) and butterfat disposed of in the form of milk, skim milk, buttermilk, milk drinks (plain or flavored), cream, and any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products, eggnog, ice cream mixes, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers); and skim milk and butterfat not accounted for as Class II milk.

Class I products which contain concentrated skim milk solids such as skim milk drinks to which extra solids have been added or concentrated whole milk disposed of for fluid use, would be included under the Class I milk definition. Products such as evaporated or condensed milk packaged in bulk or in hermetically sealed cans would not be considered as concentrated milk.

All skim milk and butterfat used to produce products other than those classified in Class I milk should be Class II milk. Included as Class II milk are products such as ice cream, ice cream mix and other frozen desserts and mixes; aerated cream products and eggnog; butter, cheese, including cottage cheese; evaporated and condensed milk (plain and sweetened); nonfat dry milk solids; dry whole milk; condensed or dry buttermilk; and any other products not specified as Class I milk. The health ordinances applicable in the marketing area do not require that these products be made from approved milk.

Cream which is placed in storage and frozen should be classified as Class II milk. Such cream is intended primarily for use in ice cream and ice cream mixes. Any frozen cream or other Class II products which are used later in a pool plant would be considered as other source milk at the time of such use and assigned to the lowest price utilization in the plant. The skim milk and butterfat in any fluid milk product which is disposed of and used for livestock feed should be classified as Class II milk.

Handlers have inventories of milk and milk products at the beginning and end of each month which enter into the accounting for current receipts and utilization. The accounting procedure will be facilitated by providing that month-end inventories of all fluid milk products be classified in Class II milk, regardless of whether such products are held in bulk or in packages. Inventories of such products on hand will then be subtracted under the proposed allocation procedure from any available Class II milk in the following month. The higher use value of any fluid milk products in inventory which are allocated to Class I milk in the following month should be reflected in returns to producers. The mechanics of the attached order provide for the reclassification of inventories on that basis.

Inventories of products designated as Class I milk on hand at a pool plant at the beginning of any month during which such plant becomes a pool plant for the first time should likewise be allocated to any available Class II utilization of the plant during the month. This will preserve the priority of assignment of current producer receipts to current Class I use.

Shrinkage should be determined by subtracting from the total pounds of skim milk and butterfat received by the handler his total established utilization of skim milk and butterfat, respectively. Shrinkage not in excess of 2 percent of the handler's receipts of producer and other source milk should be prorated between producer and other source milk on the basis of the pounds received from each source. None of the shrinkage should be assigned to milk received from other pool plants because shrinkage on such milk will be allowed to the transferring handler. A plant which is operated in a reasonably efficient manner, and for which complete and accurate records of receipts and utilization are maintained, should have total shrinkage of less than 2 percent of total receipts. It is concluded that shrinkage which is not more than 2 percent of total receipts of producer milk and other source milk should be classified as Class II milk and any shrinkage in excess of this quantity should be classified as Class I milk.

Skim milk and butterfat are not used in most products in the same proportions as contained in the milk received from producers, and therefore should be classified separately according to their separate uses. The skim milk and butterfat content of milk products received and disposed of by a handler, can be determined through certain testing procedures. Some of these products, such as ice cream and condensed products, present a difficult problem of testing in that some of the water contained in the milk has been removed. It is desirable, in the case of such products, to provide an acceptable means of ascertaining the amount of skim milk and butterfat contained in, or used to produce, these products. This may be accomplished through the use of adequate plant records made available to the market administrator or by means of standard conversion factors of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of any concentrated milk product such as condensed milk or nonfat dry milk solids should be based on the pounds of milk or skim milk required to produce such product.

Butterfat and skim milk used to produce Class II products should be considered to be disposed of when so used. Handlers will need to maintain stock records on such products, however, to permit audit of their utilization records by the market administrator. Class II products from any source used in the production of any product including products in Class I milk should be considered to be a receipt of other source milk. This will maintain priority of assignment of current receipts of producer milk to Class I utilization.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from producers should be responsible for establishing the classification of, and making payment to producers for, such milk. Fixing responsibility in this manner is a practice which is consistently followed in regulated markets and is necessary to effectively administer the provisions of the order. The operator of a plant at which milk is first received from producers is the person with whom contractual relations have been made by producers or their representatives. It would be unreasonable to expect producers to look elsewhere for payment for their deliveries. Moreover, producers would be without adequate protection if the order did not prescribe specifically which handler shall be responsible for the classification and payment of their milk. Except for such limited quantities of shrinkage, which under certain conditions (as set forth elsewhere in this decision) may be classified in Class II, all skim milk and butterfat which is received and for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage to handlers who fail to keep complete and accurate records and to assure that producers receive full value for their milk on the basis of its use. It is necessary to place the burden of proof on the handler to establish the utilization of any milk as other than Class I.

Transfers. Classification of butterfat and skim milk used in the production of Class II milk items should be considered to have been established when the product is made. Classification of Class I milk should be established when the butterfat or skim milk is disposed of. However, some Class I items may be disposed of to other plants for Class II use. Classification of any product so transferred to another plant should, under certain circumstances, be determined according to its utilization in the plant to which transferred.

Milk, skim milk, cream, or other fluid milk products transferred by a handler to the pool plant of another handler, except that of a producer-handler, should be classified as Class I milk unless both handlers indicate in their reports to the market administrator that they desire such milk to be classified as Class II milk. However, sufficient Class II utilization must be available at the transferee-plant for such assignment after prior allocation of shrinkage and other source milk. On the other hand, if the transferring handler had other source milk during the month, the assignment of fluid milk products transferred to another plant to the Class I utilization of such plant should be limited so that other source milk in the transferring handler's plant will not be allocated to Class I milk while producer milk is allocated to Class II milk in the transferee-handler's plant.

Milk, skim milk and cream disposed of to a nonpool plant, including milk which is diverted (sent directly to the nonpool plant from the producer's farm) should be classified as Class I milk, unless certain conditions are met. The operator of the nonpool plant, if requested, must make his books and records available to the market administrator for the purpose of verifying the receipt and utilization of milk in such nonpool plant. Provision for verification by the market administrator is reasonable and necessary to effectuate the clarification procedure and assure that producer milk will be paid for in accordance with its utilization. In order to classify such diversions as Class II milk the fluid milk products disposed of from the receiving nonpool plant should not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers directly supplying such plant. This recognizes the principle that is incorporated in this order that the dairy farmers regularly supplying such a plant should have prior claim to supply the milk for fluid distribution in this market and at the same time assures that producer milk which is diverted for Class I use will be paid for accordingly. The provision for classifying milk, skim milk or cream as Class II milk should not be extended to include milk transferred to nonpool plants located more than 300 miles from the nearest point in the marketing area. The area thus described is adequate to dispose of reserve milk for Class II uses. Fluid milk products moving greater distances are normally for Class I uses.

When milk or skim milk in bulk has been transferred or diverted to a nonpool plant located not more than 300 miles from the nearest point in the marketing area, the market administrator is required to verify the utilization claimed by such nonpool plant. It may reasonably be expected that the market administrator will be able to make such verification within such "surplus disposal area" without incurring undue expense. It would not, however, be administratively feasible or otherwise justifiable to have a surplus disposal area of unlimited expense or to cover a geographical area which is larger than that provided herein. Making such provision might well tend to make unreasonable demands on the market administrator in connection with the verification of occasional or irregular shipments to nonpool plants located beyond the area wherein Texas Panhandle handlers normally dispose of reserve supplies of milk for Class II purposes.

As stated elsewhere in this decision, any fluid milk product transferred to a producer-handler should be classified in Class I and should not be subject to reclassification.

Allocation. The order class prices apply only to producer milk. It is necessary, therefore, if a plant has butterfat or skim milk other than that received in milk from producers, to determine the quantities of milk in each class to be assigned to producers. It is recognized that some supplemental milk may be needed when supplies are short in the Texas Panhandle market.

Other source milk from unregulated sources should be assigned to Class II milk first. The plants supplying such milk may not have purchased such milk from dairy farmers on a classification and use basis and it is not feasible to determine this or other conditions of sale. There is no assurance that such milk would not be used to displace producer milk in Class I to the advantage of the purchasing handler.

The milk of producers who are primarily engaged in supplying the Texas Panhandle market, however, should be given priority in the assignment to the Class I utilization at regulated plants. This is necessary to insure the stability of the classified pricing program of the order. If the order permitted handlers to obtain other source milk whenever it was advantageous to do so for Class I use while producer milk in the plant was utilized in Class II, the order would not be effective in carrying out the purpose of the act. Also, the market would be deprived of a dependable supply of milk. Much of the supplemental milk has in the past been brought in from other Federal order markets. Handlers bringing in such milk have assisted the market in keeping Class I outlets fully supplied.

When such supplemental milk is actually needed and is obtained under conditions which assure that it was paid for at Class I prices under another Federal order, a more limited priority of assignment to Class I should be permitted under the order. Provision should be made, therefore, that 5 percent of producer milk may be assigned to Class II before any assignment of Federally regulated other source milk to such class. This will permit a handler whose producer milk supplies run short to bring in milk from other Federal markets and have it assigned to Class I, even though he has a small amount of reserve milk in his plant. Such other source milk will be assigned to any Class II milk in excess of 5 percent of producer milk. This is necessary to assure producers that no more than the necessary reserve supplies will be allocated to Class II use when milk is imported from other regulated markets.

If, after making the various assignments of skim milk and butterfat pursuant to the allocation provisions of the owner, the total of all Class I and Class II milk assigned to producer milk exceeds the amount of producer milk reported to have been received by the handler for whose pool plant the computation is being made, such "overage" should be assigned first to the available Class II utilization and any remainder to Class I. Such overage should be paid for by the handler at the applicable class prices.

(c) *Class prices.* Class I prices should be established at a level which, in conjunction with the Class II prices hereinafter concluded to be appropriate, will result in returns to producers high enough to maintain an adequate but not excessive supply of quality milk to meet the requirements of the marketing area. If prices remain too low, insufficient quantities of milk will be produced to assure that the Class I market will be fully supplied. Conversely, if prices are too high, production will be overstimulated and consumption curtailed. This would cause more milk to be produced than is needed to satisfy the demand for Class I milk, resulting in the development of unnecessary and uneconomic surpluses.

When milk produced locally is insufficient to meet the Class I needs of the market, supplemental supplies of Grade A milk are purchased by handlers in the marketing area from plants outside the regular supply area. Prices of this milk fluctuate to a considerable extent with the value of milk produced for manufacture. Other items which determine the prices at which such milk will be available to Texas Panhandle handlers include the cost of transporting such milk to the marketing area and the alternative outlets for such milk.

Proper recognition must be given the prices at which alternative sources of supply are available, especially since any milk plant wherever located may, by meeting the prescribed qualifications, become a pool plant under the order. It is necessary, therefore, that the Class I prices in the proposed Texas Panhandle milk marketing order should not be set at levels which will bring the cost of such milk above the cost of obtaining regular and dependable Grade A milk supplies from other areas.

The Class I price should be fixed in relation to the general level of the value of milk used to produce manufactured dairy products. To achieve this end a basic price should be adopted which will reflect this general level and to which differentials should be added to result in the appropriate Class I price. Such basic price should be the higher of (a) the average of the prices paid by the 13 "Midwestern Condenseries" or (b) a price computed on the basis of the daily quotations for 92-score butter at Chicago and the carlot prices for nonfat dry milk solids for human consumption, f. o. b. manufacturing plants in the Chicago area.

The purpose of such basic price is to give consideration to the national economic factors underlying the price for milk and manufactured dairy products and which in turn also influence the local market prices. Prices for milk used for fluid purposes in competitive markets are related to the prices paid for milk used for manufacturing purposes. Production and marketing of milk for each type of manufacturing outlet are subject to many of the same economic factors. Since the market for most manufactured products is countrywide, prices of manufactured dairy products reflect, to a large extent, changes in general economic conditions affecting the supply and demand for milk. For these reasons, fluid milk markets have used butter, nonfat dry milk solids, and cheese prices, or the prices paid by condenseries with differentials over these basic or manufacturing prices to establish fluid milk prices. These differentials are needed to cover the cost of meeting quality requirements in the production of market milk, transportation costs to the fluid market, and to furnish the necessary incentive to get such milk produced.

The basic formula proposed herein is similar to that used in many other Federally regulated markets and the price resulting therefrom will usually be the same as or will closely approximate the basic formula price which is applicable in determining the Class I price in the various Federal orders in the Southwest. The price computed under the formula would have averaged $3.47 for 1954. The differential to be added to this basic price in determining the Class I price would be applicable to all skim milk and butterfat included in the Class I definition of the proposed order. Consequently, the total quantities of producer milk classified in Class I under the order may be significantly greater than the quantities of producer milk now allocated to Class I under the various classification schemes now in effect in the market. It is concluded that the differentials to be added to the basic formula price should be $1.85 for the months of March through June and $2.15 for all other months.

The seasonality of the Class I differential herein proposed—30 cents less in March through June than in other months—gives greater incentive to the production of milk for the market in those months when it is needed for Class I purposes. It also serves to provide price changes more nearly in accord with seasonal price changes in other markets both regulated and unregulated.

The average Class I milk price which would have been provided under the proposed formula for the year 1954 is $5.55. The prices paid producers at the time of the hearing by the two principal handlers in the market for base or "Class I milk" of four percent butterfat content delivered to their plants in Amarillo were $5.55 and $5.58, respectively. It was indicated at the hearing that these prices are representative of the Class I or base prices paid by the other handlers in the market at their plants in the marketing area.

Evidence at the hearing indicated that eight handlers receiving milk from approximately 500 Grade A producers would be fully subject to regulation under the order. Detailed information relative to the combined receipts and Class I disposition of six of these handlers for the year 1954 was presented at the hearing. These six handlers, who receive milk from approximately five-sixths of the producers on the market, distribute Class I milk throughout the marketing area from plants in Amarillo, Borger, and Pampa. Producer deliveries of raw milk to the plants of these handlers in 1954 totaled 81.5 million pounds, and Class I disposition from these plants in the same period was 77.5 million pounds.

Producers proposed a Class I differential of $2.25 compared with the average monthly differential of $2.05 which is provided in the attached order. Prices paid their producers by handlers in nearby markets must be considered in establishing the Class I price under the Texas Panhandle order. Handlers who would be regulated by the proposed order compete for business in some areas with handlers regulated by other Federal orders. In addition, substantial quantities of milk are at times moved into the market from plants subject to such other orders. In 1954 supplemental supplies of milk for Class I purposes were purchased by local handlers from plants under the Oklahoma City, North Texas, Ozarks (Springfield, Missouri), and Chicago Federal orders.

In the absence of regulation, the value of Grade A milk f. o. b. the marketing area is not greater than the price of such milk in the nearest major production area from which substantial quantities of milk are available plus the cost of transporting the milk to the market. More supplemental supplies of milk in 1954 were moved to the Texas Panhandle market from the Producers' Creamery Company plant at Springfield, Missouri, than from any other source. The Springfield plant is in the Ozarks marketing area and the Class I differentials under that order range from 63 cents for the months of April, May and June to $1.08 for the 3 fall months of lowest production. The average monthly Class I differential applicable under the Ozarks order at Springfield is 78 cents. The cost of moving milk the 580 miles from Springfield to Amarillo in tank trucks of 27,500 pound capacity is $1.02 per hundredweight. This transportation cost plus the average Class I differential under the Ozark order is 25 cents less than the average Class I differential of $2.05 which is provided in the attached order. The margin of 25 cents per hundredweight is less than is customarily charged as a receiving, cooling and handling allowance on milk moved from Springfield to the Texas Panhandle marketing area.

The Class I price under the Federal order for the North Texas marketing area is widely accepted and used as a basis for determining the Class I prices in various other milk marketing areas throughout Texas. Large quantities of milk throughout the State are sold on the basis of the North Texas Class I price, and some of this milk is distributed in competition with milk from the plants of Texas Panhandle handlers. The average monthly Class I differential under the North Texas order is $2.13. Dallas, which is the largest city in the North Texas marketing area, is 361 miles southeast of Amarillo.

At least one handler subject to the Central West Texas order distributes some milk in the proposed Texas Panhandle marketing area. The applicable Class I price under this order at two of the principal cities in the marketing area, Abilene and Midland, is the North Texas Class I price plus 25 and 45 cents, respectively. Midland is 260 miles directly south of Amarillo. Abilene, which is 146 miles east of Midland, is 270 miles from Amarillo.

Reference at the hearing was made to the competition from milk priced under the Southwest Kansas order. Dodge City, Kansas, which is the largest city in the Southwest Kansas marketing area, is 244 miles north of Amarillo. There was no evidence at the hearing to indicate an overlapping of the production areas for that market and for the Texas Panhandle market. On the distribution side, a Dodge City handler distributes a relatively small quantity of milk in several communities near the northern boundary of the proposed marketing area.

The Class I differential under the Southwest Kansas order is $1.65. After giving consideration to the transportation costs, handlers under the Southwest Kansas order would have no advantage in competing with local handlers for sales in the Texas Panhandle marketing area, and local handlers would have no incentive to replace producer milk with bulk tank shipments from plants under the Southwest Kansas order. The average monthly differential of 40 cents by which the Class I differential under the Texas Panhandle order exceeds that of the Southwest Kansas order will provide a relationship of prices which is economically sound. This is also very near the historical relationship of prices between the two markets.

Consideration at the hearing was given to making provision in the order for adjusting the Class I price upward or downward each month as supplies of producer milk changed in relation to the demand for Class I milk in the market. A supply-demand adjustment provision in the order to reflect such changing conditions could be helpful in providing proper price adjustments within the market and a proper price relationship between the Texas Panhandle market and other markets.

It was contended at the hearing that any supply-demand formula which would be provided in the order should not be made effective until the order has been in operation for at least 12 months. It would not be feasible to make provision in the order on the basis of the information now available for a supply-demand formula to become effective a year after the inception of the order. It was evident at the hearing that adequate data were not available which would serve as a proper basis to formulate an appropriate supply-demand adjustment provision. Such a provision could be better formulated after the order had been in effect for a reasonable period of time and the necessary detailed statistical data were available.

It is concluded, therefore, that a supply-demand adjustment provision should not be incorporated in the order at the present time. However, such a provision should be given consideration at an amendment hearing at such a time after adequate experience in the operation of the order has been realized and the statistical data necessary for its proper formulation are available. At such a hearing it would be timely and appropriate to review in a detailed manner the Class I pricing formula which is herein provided. Provision is made therefore that the Class I pricing formula in the attached order shall not be effective beyond August 31, 1957. Such a provision would insure a reappraisal of the level of the Class I price and the components used in its determination within a reasonable period after the order became effective.

The Class I price should be announced by the fifth day of the month. In order to do this, it is necessary to use price quotations for the preceding month in calculating the basic formula price.

Class II price. Some milk in excess of Class I requirements is necessary in order to maintain an adequate supply of fluid milk for the market on an annual basis. The Class II price for such excess milk should be maintained at the highest level consistent with facilitating its movement to manufacturing outlets when it is not needed in the market for Class I purposes. The Class II price should be at such a level that handlers will accept and market whatever quantities of milk in excess of Class I needs may arise from time to time. The price, however, should not be so low that handlers will be encouraged to procure milk supplies solely for the purpose of converting them into Class II products.

Most handlers in the proposed area have extremely limited facilities for handling any milk above that needed for their day to day fluid operations. A few handlers manufacture such byproducts as cottage cheese and ice cream mix for the needs of their own trade. However, most milk not needed for fluid distribution in the market must be transferred or diverted from the plant at which it is usually received to a plant having adequate manufacturing facilities.

During the spring months of heavy production producer milk which is not needed by handlers is moved to manufacturing plants after being received by the handler or is diverted directly to the manufacturing plant for the account of the handler. Returns to producers for such milk have been that which the handler realized in its sale to the manufacturing plant. Payments to producers at other times for "overbase" milk which was utilized or disposed of for manufacturing purposes followed no consistent pattern.

Prices paid by manufacturing plants may differ because of changes in the relative prices of the products which they manufacture. Handlers will dispose of excess milk to those plants which are paying the highest price at the time of such disposal. Because of small volume and inefficient means of handling, it is possible that some handlers may, at times, incur losses in handling their necessary reserve supply of milk. The handling of such reserve milk is incidental, however, to the handling of fluid milk.

The pricing of milk in the months of flush production should be at the rate at which milk produced for the market will be handled so that such seasonal reserves will not disrupt the orderly marketing of milk. The level of such pricing should not be below that paid for ungraded milk, since such pay prices represent the lowest value in the milkshed for milk for manufacturing purposes. Handlers who need and desire the entire output of producers during periods of short supply should assume the responsibility of paying producers at least the competitive manufacturing prices for Class II milk throughout the months of flush production. During the months of short production, a higher level of prices for Class II milk should be provided in the order so as to encourage the transfer or allocation of the available supplies of milk from manufacturing uses to fluid uses.

The Class II price for the months of March through June should be the average of the prices paid for milk received from dairy farmers by selected manufacturing plants in the area. The four such plants whose pay prices should be so used are Plains Creamery, Arnett, Oklahoma; Price Creamery, Portales, New Mexico; Quint County Creamery, Mangum, Oklahoma; and Swisher County Creamery, Tulia, Texas. These plants are the principal buyers of ungraded milk in the milkshed of the proposed marketing area.

For each of the months of July through February the Class II price should be the higher of either the price computed pursuant to a butter-nonfat solids formula which will reflect changes in manufactured product values in the general area; or the average of the prices paid by the four local manufacturing plants.

For the year 1954, the Class II price herein proposed for milk containing 4 percent butterfat would have averaged $3.26 per hundredweight. The comparable average price paid by the four local manufacturing plants during the same period was $2.93. However, during those months when the quantity of Class II milk on the market is largest, March through June, the Class II price (based on the paying price of the four local manufacturing plants) would have averaged $2.88 in 1954.

Provision is made in the attached order to permit a handler to divert directly to manufacturing plants any milk not needed in his own operations. Handlers who need and desire the entire output of producers during periods of short supply should assume the responsibility of paying producers at least the competitive manufacturing prices for Class II milk throughout the year.

Butterfat differentials. As pointed out previously herein, it is concluded that butterfat and skim milk should be accounted for separately for classification purposes. It will be necessary, therefore, to adjust Class I and Class II prices of milk in accordance with the average test of milk in each class by a butterfat differential which will reflect differences in value due to variations in the butterfat content of each product. The values resulting from multiplying the average price of 92-score butter at Chicago by 0.120 for Class I milk and by 0.110 for Class II milk will provide an appropriate basis for adjusting such prices in this market. The use of butter prices in this manner will reflect changes in the central market prices of butterfat and follows standard practices in most fluid milk markets for adjusting for butterfat variations. The basing point from which such adjustments are made should be 4.0 percent butterfat. This is the basis now used in the Texas Panhandle marketing area.

In order that the Class I butterfat differential may be announced early each month, it is provided that the Class I differential be based on the average price of butter in the preceding month. This will permit the announcement of the Class I differential at the same time that the Class I price is announced.

Class II prices and butterfat differentials will not be announced until after the end of the month. Although handlers will not know the exact cost of such milk as it is utilized, they will know that their cost will tend to follow movements in daily or weekly dairy product prices and in any event the cost of milk of their principal competitors for manufactured product outlets.

The butterfat differential used in making payments to producers should be calculated at the average of the return actually received from the sale of butterfat in producer milk. The rate to be used for this purpose would be the average of the Class I and Class II differentials weighted by the proportion of butterfat in producer milk classified in each class. Thus, producer returns for butterfat will reflect the actual sale value of their butterfat at the class prices provided in the order. The producer butterfat differential in no way affects the handlers' cost of milk but merely prorates returns among producers whose milk differs in butterfat test.

It was indicated at the hearing that the average test of producer receipts exceeds that of Class I sales. The butterfat differentials recommended herein for Class I and Class II milk should tend to encourage the production of milk with a fat test more in line with the fat requirements of the market.

Location differentials. It was proposed at the hearing that handlers be allowed a location differential with respect to milk moved from a receiving plant to a processing plant.

The record discloses that some of the milk normally supplied to the marketing area is received by handlers at a distance from the plant which processes and distributes the milk. In addition, some of the milk is brought to the marketing area in packaged form.

It is customary for handlers to pay producers delivering milk to country receiving stations a lesser price per hundredweight than is paid producers delivering directly to bottling plants. To the extent that this represents a lower price because of the location of the milk, such difference in value should be recognized under the order. Location differentials should be included in the pricing arrangements to recognize differences in the value of producer milk in relation to its location with respect to the market.

The principal supply plant to which the location differential herein provided would be applicable is at Arnett, Oklahoma, 150 to 155 miles from Amarillo. Milk is received at this plant from approximately 100 Grade A producers and is moved by the handler in tank trucks to his processing plant in Amarillo. At such times that this milk is not needed by the handler in Amarillo for Class I purposes it is utilized by the handler in his ungraded operation at Arnett or otherwise dispose of for manufacturing purposes.

Producers delivering to the Arnett plant are paid 75 cents per hundredweight less than producers delivering directly to the same handler's plant in Amarillo. The handler proposed that the 75-cent rate be incorporated in the order as an appropriate location differential on milk received at the Arnett plant. He contended that although this amount is greater than the actual cost of moving the milk from Arnett to Amarillo, such charge is necessary in order to compensate him for having established, and to enable him to continue to maintain, the receiving station facilities at that location. In addition, he contended that incorporation of the 75-cent rate within the framework of the order is justified since that is the rate which has been maintained for some time.

Various suggestions were made at the hearing relative to location differentials other than the 75-cent rate proposed by the handler. One of these would provide a location differential of 35 cents applicable to the Arnett plant and not otherwise make any provision for a location differential in the order. Another proposal would use as a basis for a location differential the rates prescribed by the Railroad Commission of Texas on intrastate shipments of milk in bulk tank trucks by regulated carriers. For a 150 to 155-mile haul, the distance from Arnett to Amarillo, the rate fixed by the Commission is 50 to 52 cents per hundredweight. The rates for the same distance charged by the Dairyland Transport Corporation, Springfield, Missouri, a company specializing in hauling milk and milk products in tank trucks, are 29 to 31 cents per hundredweight.

Producers shipping to the Arnett plant are an integral part of the supply for the Texas Panhandle market. If this plant were closed as a receiving station for the Amarillo market, producers would be required to ship directly to Amarillo or to find another market for their Grade A milk. It was not shown that such other markets are readily available to these producers. Neither was it shown that it would be more practicable for the producers now shipping to Arnett to ship directly to the handler's plant in Amarillo.

In view of the above stated considerations, the Class I price at a pool plant should be reduced by 35 cents per hundredweight of milk for the first 100 miles and by 1.6 cents per hundredweight of milk for each additional 10 miles or fraction thereof that such plant is from the primary center of consumption of the proposed area. The City Hall of Amarillo, Texas, affords the most appropriate point in the marketing area for the market administrator to determine the rates applicable at such plants.

The location differential which is provided in the attached order is economically sound and will be equitable to all handlers wherever located. The proposed rates are representative of the cost of hauling milk by an efficient means to the market. To make provision in the Texas Panhandle order for a location differential the applicability of which would be limited to one and only one plant or to provide a differential predicated solely on the historical experience of one plant in the market without giving consideration to all other relevant factors would be neither feasible nor justifiable.

Prices paid producers supplying plants to which location differentials apply should be reduced to reflect the lower value of such milk f. o. b. the point to which delivered.

No adjustment should be made in the Class II price because of the location of the plant to which the milk is delivered. There is little difference in the value of milk for manufactured uses associated with the location of the plant receiving the milk. This is true because of the low cost per hundredweight of milk involved in transporting manufactured products. The prices paid for ungraded milk received at various sections of the milkshed do not indicate any difference in value associated with location.

After a handler receives milk for Class II use, he should be expected to handle and dispose of the milk in the most advantageous possible manner. Prices paid producers for such milk should not be made dependent upon the method employed by the handler in disposing of such milk. To do otherwise would remove part of the incentive for keeping handling costs at a minimum. To insure that milk will not be moved unnecessarily at the expense of producers under the marketwide pool, the order should contain a provision to determine whether milk transferred between plants may receive the location differential credit. This should provide that any milk transferred be assigned to any Class II use remaining in the transferee plant after a maximum assignment of 5 percent of the direct producer receipts to Class II milk at such plant.

Payments on unpriced milk. The order should provide that payments be made into the producer settlement fund of the marketwide pool with respect to milk not priced under the order which is allocated to Class I milk in a pool plant.

Testimony at the hearing indicated that substantial quantities of milk which would not be subject to the pricing provisions of the Texas Panhandle order are being sold in the proposed marketing area. Without the payment provisions on unpriced milk which are herein provided the sale of such milk in the marketing area would seriously jeopardize the successful operation of the classified pricing provisions of the order.

Receipts of milk in excess of actual Class I disposition is necessary to operate a fluid milk business. Because of seasonal fluctuations in production not matched by seasonal changes in consumption, this excess is particularly large in certain months of the year. Such excess or reserve milk is surplus to the fluid operation, and can be marketed only in manufactured form in competition with products made from ungraded milk produced in the major low cost dairying areas of the United States. Thus, such reserve milk yields a considerably lower return than is necessary to sustain graded milk production in the Texas Panhandle milkshed. Likewise, it yields a lower price than would be necessary to purchase graded milk on a regular basis in other supply areas and pay the cost of transportation to the Texas Panhandle marketing area.

The existence of this reserve Grade A milk, which must be marketed at a lower price, is the primary cause of the instability which may affect all fluid milk markets. If a handler is able to use milk he purchases at Class II prices for Class I use, he stands to gain advantage, but in so doing he demoralizes the Class I market price.

One of the paramount reasons why regulation of prices is considered necessary in the Texas Panhandle market is to insure that the position of handlers paying producers a Class I price for fluid milk will not be undermined by other handlers using the market's excess or surplus producer milk for Class I use. It is equally important that the Class I market be protected from the use of seasonal or other excess milk from other markets as well as from its own surplus. If the order failed to provide such protection, a handler could curtail purchases of producer milk to his own advantage and secure low cost reserve supplies from other markets for Class I use.

Seasonal supplies are easily and cheaply acquired during the months of flush production when most markets are receiving milk greatly in excess of their current fluid needs. If adjacent milksheds dispose of seasonal surplus in each other's Class I markets, the result will soon be market chaos, particularly in the spring months. Class I prices would be demoralized and the rate of milk production for both markets on a permanent basis would be seriously impaired. Such marketing conditions would be contrary to the stated purpose of the act. It is necessary, therefore, in order to insure the effectiveness of the classified pricing program and to promote orderly marketing, that some measure be taken to remove the incentive which handlers have to acquire unpriced milk and undermine the Class I pricing structure.

One possible alternative would be to extend price regulation in accordance with order provisions to all milk plants which supply milk either directly or indirectly to the Texas Panhandle market. This alternative is both economically and administratively unacceptable within the framework of the proposed order. It would open the market pool to anyone who applied merely a token quantity of milk to a plant serving the marketing area. The objections to such distribution of pooled funds was discussed earlier in the decision in connection with the recommendations for standards of pool participation.

Such regulation would have the further disadvantage of being cumbersome, expensive, difficult to enforce, and it would interfere with the acquisition of needed supplemental milk supplies for the market. It would not be possible or desirable to limit the number of plants or area from which milk might be purchased. However, in order to bring such plants under regulation, it would be necessary to establish individually tailored transfer and allocation rules according to the various plant locations, markets and supplies. Milk would have to be accounted for in its disposition from these plants to its various destinations and uses to determine classification. Also, it would be necessary to ascertain sources of supply other than receipts directly from farmers and determine what priority should be given such supplies in the allocation of Class I milk. In the case of a plant which made an incidental shipment of milk, perhaps at the end of the month, or in the case of such items as storage cream, additional complications would be involved. Earlier inventories as well as sales would have to be ascertained and classified. Classification might depend upon transactions made in the past concerning which adequate records were not kept. Producer prices would be fixed for milk already purchased and sold. Required record keeping and auditing problems would be greatly multiplied with such regulation.

It is concluded that it is not feasible to price all milk which may enter the market and that provision is necessary in the order which will insure against the displacement of producer milk by such unpriced milk for the purpose of cost advantage. There is no choice as to what type of provision can be used for this purpose. The only alternative available under the order is to levy a charge against unpriced milk used in Class I to whatever extent is necessary to remove the advantage there may be in using such milk instead of priced milk from producers.

Several problems are involved in formulating the provisions for any charge or payment designed to bring about the removal of the advantage of using unregulated milk. The rate of payment for this purpose must not be so low that it will permit a handler to have temporary or permanent advantage through sale of unpriced milk as Class I in the marketing area. It should not be so high that it will penalize suppliers of unpriced milk who offer milk needed by the market and who are not in a position of gaining an unfair advantage by such sale of milk. The payment must be provided for in a manner which is administratively feasible and which does not bring about unjustified administrative inconvenience or expense.

One method for setting the rate of payment would be to ascertain the actual cost to the regulated handler of milk which he purchases from unregulated plants and charge as a compensation payment any amount by which the Class I price exceeded the cost of the unregulated milk used in Class I. Such a scheme is not sound from the standpoint of administrative feasibility and it would not necessarily remove the advantage in using unregulated milk even though it were feasible. Rates at which milk sales are billed may not represent actual cost to the purchaser. In the case of a firm which owns or controls pool plants under the proposed order as well as unregulated plants, the rate of payment from one plant to another, if any were made, would have little or no significance. If such a provision were to be adopted, the billing rate might be deliberately set in each instance at a level which would avoid any payments without regard to the value of the milk. Thus, the intended effect of this provision might be circumvented by merely adjusting the bookkeeping procedure.

A handler having no unregulated plants would no doubt find it possible to arrange a billing price on purchased milk which would avoid any compensatory payments. If a handler had the choice of paying money to the marketwide pool or to a person from whom he was buying milk, he would probably choose the latter. A kick-back arrangement or offsetting purchase and sale might readily be arranged, perhaps through a third party. Since the billing price for milk would be a self-serving figure for both parties to the transaction, it would be virtually impossible to ascertain that it represented the true cost to the purchaser.

If the stated purchase price were a true cost, it would still not fulfill the purpose of removing the advantage to unregulated milk to base compensation payments on the difference between such price and the Class I price. Sales of priced milk between regulated handlers ordinarily take place at the class price plus a handling charge. This handling charge varies according to circumstances, but represents a payment to the receiver of the milk to offset his purchasing and receiving costs, such as dumping, weighing, testing and cooling the milk, paying producers, and other costs of doing business. The cost of receiving the milk in bulk form is somewhat less than receiving it from producers. Thus, in order to remove the advantage to unregulated milk, it would be necessary to provide that the cost of bulk unregulated milk be somewhat more than the Class I price. It would be exceedingly difficult to determine what this rate should be, particularly in the case of products such as condensed skim milk and cream, where the allocation of additional processing costs among more than one end product is involved. Furthermore, the marketing agreement act does not give the Secretary express authority to enforce prices other than producer prices. This scheme for removing the advantage in using unregulated milk is rejected for these reasons.

Another suggested method is to determine the price actually paid dairy farmers by the unregulated milk dealer who first received the milk, and base the compensation payment thereon. This method has several shortcomings. The various payment plans which are used in paying farmers for milk would make the determination of pay rates to individual farmers an exceedingly difficult task. For example, unregulated milk dealers may use varying rates of butterfat differentials, different types of base rating plans, or payments based on volume of deliveries. Various devices such as these for paying farmers often make it impossible to determine actual rate of payment per hundredweight of milk. In this case as with bulk milk purchases stated prices are often illusory. The cost of the milk itself may be modified by unrealistic charges for various items of supplies and services. A milk dealer affected by such a provision might increase his producer price and increase hauling rates an offsetting amount. Whatever payment plan an unregulated milk dealer may use is a matter of his own choice and it can be changed readily. Pricing or paying arrangements he may have with farmers are not subject to regulation. Calculation of compensation payments according to this suggestion would give any affected dealer special incentive to resort to these special payment plans suggested here or others he might devise for purposes of evading payments.

The further problem of establishing the rate of payment to be required would in itself preclude use of the actual cost of the milk purchased from farmers by unregulated handlers as a basis for calculating the payment to be required. If a payment were to be required on the unregulated milk based on the difference between prices paid farmers and some other price, the unregulated handler could avoid payments by increasing his prices to farmers. This would give an unregulated handler the advantage over regulated handlers in that a regulated handler has no choice as to what he is required to pay producers nor how this money is to be distributed. Likewise, it would enable unregulated suppliers to dispose of Class I milk in the marketing area with no obligation to equalize such sales with other suppliers of the market.

Even though the rate of payment to producers for all milk might be known, it would still be impossible to ascertain the rate of payment on that portion of the milk disposed of in the marketing area. Since milk marketed outside the marketing area would represent most of the total supply in the unregulated plant, it would be necessary to determine payment for milk marketed to the various outlets. When handlers have both surplus as well as Class I milk in their plants, it is not realistic to assume that the purchase price for milk for each use is the same.

It has been suggested that in order to overcome this objection the plant of the unregulated handler be subject to audit and that the rate of compensation payment be based on the difference between the average utilization value at order prices in the unregulated plant and the average rate of payment to producers. This method would not recover the entire advantage of selling surplus milk as Class I in the marketing area. This method has not only the disadvantages associated with other schemes which assume the determination of actual pay rates to producers, but it would involve, in the case of the Texas Panhandle market, an extremely complicated and administratively impractical system of accounting and determination in such plants. The unregulated plants which are potential sources of supply of supplemental milk and milk products are numerous and widely scattered. Determination of utilization value in these plants would involve the same complications and administrative expense and difficulties as discussed earlier which would be involved in complete regulation of such plants. To make the detailed accounting necessary to establish classification, such unregulated dealers would need to maintain the same detailed records as wholly regulated handlers.

An alternative method for determining the rate of compensation payments would be to base the rate of payment on the difference between blend prices prevailing in an area and the Class I price. This method has been suggested because it is assumed that unregulated handlers will be forced by competition to pay farmers approximately average blend prices. While this approach eliminates the need for attempting to determine actual pay rates, it could not be used without modification and still prevent the displacement of regulated milk with surplus milk from other markets at all times throughout the year. Unregulated plants, as well as regulated plants, may have some surplus milk at all times and particularly during the seasons of flush production. As a result, prices paid farmers are, in fact, blend prices made up of returns from the sale of milk in Class I outlets, as well as sales to the surplus market. If an unregulated plant were in a position to sell its surplus milk for Class I use in the marketing area and maintain its regular Class I outlets, it would have a competitive advantage over regulated handlers who found it necessary to dispose of part of their milk as surplus.

None of these suggestions presents an acceptable approach to the problem of compensation payments, to be applied to other source milk allocated to Class I in pool plants. It is necessary, therefore, to resort to a different procedure. The only sound method of dealing with this problem is one based on a recognition of the economics involved as they affect producers and handlers. This approach resolves itself primarily into a question of market values of milk.

Fully regulated handlers under the order seeking to purchase unregulated milk will naturally resort to the lowest cost source from which suitable milk is available. In fixing the rate of compensation payment, it is necessary, therefore, to determine what the lowest cost source may be and to base the payment on the difference between the cost of such milk and the cost of milk priced under the order for similar use. Milk supplies are larger in spring and summer than in fall and winter, and because of relatively constant sales of fluid milk, the excess increased production must be marketed largely as manufactured products. This outlet represents the opportunity cost of the surplus milk since it is the highest price at which the milk can otherwise be sold. It is this opportunity cost or value of such milk which would be effective in determining the price at which the unregulated plant would sell such milk.

Since considerable volumes of Grade A milk must be disposed of as surplus by various unregulated plants from which the Texas Panhandle market may obtain milk, it is evident that handlers under the order could obtain such milk at prices reflecting its value as surplus milk. In short, the actual value of seasonal or reserve milk is not the blend price paid to dairy farmers but rather the price which can be obtained for it in the market when disposed of as surplus milk.

Therefore, for the months of March through June, during which period surplus milk may be available in substantial volumes to the Texas Panhandle market from nonpool sources, the compensation payment on the receipts of other source fluid milk products which are allocated to Class I milk should be based on the difference between the minimum price of producer milk used for surplus and the applicable Class I price under the Texas Panhandle order. The Class II price established by the order is a fair and economic measure of the value of milk in surplus uses in the Texas Panhandle area.

During the months of July through February the milk supplies for the Texas Panhandle market tend to be shorter than in other seasons of the year. It is not likely that other source fluid milk products will be available to the market at surplus prices. The compensation payment during these months should be the difference between the marketing area uniform price to producers and the Class I price adjusted to the location of the plant from which such fluid milk products are supplied. The relationship between the supply of milk and the demand for milk in the Texas Panhandle market during the July through February period tends to fluctuate from year to year according to marketing conditions. These conditions will generally prevail also in surrounding markets which are potential sources of supply for unpriced milk. Thus, the rate of compensation payment based on the difference between Class I and uniform prices will adjust itself automatically in these months according to the changes in the demand for and the price of outside supplies. If supplies of producer milk are relatively plentiful, unpriced milk can be expected to be cheaper. Therefore, in order to equalize costs of milk the rate of compensation payment should be somewhat higher. On the other hand, as milk supplies in the area tend to be shorter, it is to be expected that the cost of unregulated milk will increase. Under these circumstances the rate of compensation payment will be correspondingly less.

In some instances there will be no and in all cases insignificant transportation charges per hundredweight experienced by handlers on other source milk used in the form of concentrated milk products under the skim milk equivalent basis of accounting provided for in the order. For this reason, other source milk from such products should be considered to be from a source at the location of the pool plant where it is used. In other words, the compensation payment on such other source milk derived from concentrated products, such as condensed milk or nonfat dry milk solids, which is allocated to Class I milk will be equal to the difference between the market area Class I price and the corresponding uniform blend price or Class II price, as the case may be. By following this procedure, other source milk derived from Grade A manufactured products which may be made from producer milk in handlers' plants or purchased from outside sources will be subject to identical reclassification changes. This will remove to the greatest extent that it is administratively possible, any advantage there may be in utilizing the products from unregulated sources for producer milk. It also will tend to promote the use and storage of producer milk in the form of manufactured products during periods when receipts of producer milk are greater than the Class I requirements of the market.

By choosing a rate of compensation payment which reflects the cost of the cheapest other source milk which may be expected to be available to regulated handlers, any advantage to one handler relative to the others in obtaining such cheap milk and substituting it for producer milk in Class I, is removed insofar as is administratively possible. No handler is given the clear opportunity to gain an unfair advantage over his competitors which otherwise would exist. However, if other source milk is to be purchased, the incentive for purchasing the cheapest of such milk remains, because the lower the price which a handler pays for other source milk, the lower will be his total cost of purchasing such milk. This follows from the fact that the measure of the compensation payment is an objective one and does not depend upon the particular price which the handler paid for the other source milk.

As indicated elsewhere in this decision, the process of marketwide pooling creates special incentive for milk to come into the market to gain certain advantages. Such milk would not be associated with the market in the absence of regulation.

The act requires that prices fixed under the order for milk purchased from producers or associations of producers be uniform as to all handlers, subject only to usual adjustments, such as those for butterfat content and location of the milk. The only prices fixed under the order are those for producer milk, and it is hereby determined that they are uniform as required by the act. Class prices for pool milk under the order are for raw milk as received from farmers, f. o. b. the loading platform at the plant where first received.

In calculating the payments on other source milk the Class I price must relate to and be fixed as of the point where the milk is received from farmers at the first receiving plant, so as to be properly comparable with the minimum Class I price for producer milk at that level of marketing. No allowance should be made for subsequent handling costs and profits in this farm level comparison between producer and other source milk because such costs and profits attach at stages of marketing subsequent to the basing point to which minimum Class I prices for producer milk refer. They are in no way regulated by the order with respect to producer milk. Neither the act nor the proposed order contemplates, authorizes or provides for the regulation of subsequent handling charges or profits or the establishment of uniform resale prices between handlers, whether the milk be from producers or other sources.

The compensation payments herein provided are not only incidental, but necessary to sustain the classification and pricing of milk according to its use in the market. The rates of payment specified are those which are necessary and appropriate to accomplish this purpose.

Testimony in the hearing record concerning availability of milk supplies to Texas Panhandle handlers indicates that the rate of payment recommended here will tend to equalize the competitive position of priced and unpriced milk, and will avoid displacement of producer milk for reasons of cost. However, if experience proves that milk is available to handlers in the future at prices different than those now indicated, or that such payments otherwise interfere with the purposes of the order, then it will be necessary to reconsider the rate of compensation payment on the basis of that experience.

In addition to that other source milk which would enter the marketing area through pool plants, some nonpool milk may be distributed within the marketing area from nonpool plants. It would not be possible to stabilize the market under the classified pricing program if distribution in the marketing area of unpriced milk from nonpool plants without compensation payments were allowed. Such milk should be classified and priced the same as unpriced milk distributed through any other channels.

Handlers distributing such unpriced milk in the marketing area from nonpool distributing plants have the same opportunity to buy milk at the opportunity cost level as do the operators of pool plants who purchase other source milk. Such milk may be purchased and distributed in the marketing area. In addition, however, the operator of the nonpool plant in all probability has surplus milk in his own plant which he would want to dispose of on any basis which would yield a higher return than the surplus value. It would be particularly easy to dispose of such milk for Class I use in the marketing area by supplying contract business such as hospitals and defense establishments. With surplus outlets as the alternative, and no compensation payments to make, the nonpool handlers would have considerable incentive or margin to underbid the seller of priced milk for such sales. A nonpool plant might also use such price advantage in selling his surplus milk to Class I outlets for the purpose or establishing a regular trade on retail or wholesale routes to homes and stores in the marketing area. The nonpool plant might sell up to 15 percent of its milk into the marketing area as Class I without becoming subject to regulation. To allow a nonpool plant to use its surplus milk in this manner for establishing a regular trade in the marketing area without compensation payments would mean that such plant would have a marked competitive advantage over regulated handlers selling priced milk. Such conditions could readily lead to disorderly marketing conditions.

It is considered inappropriate also to subject a plant to full regulation if only a small share of its milk is sold in the marketing area. Such regulation might place a plant of this kind at a distinct disadvantage in relation to its unregulated competition. In some cases, a nonpool plant may be disposing of a larger share of its milk as Class I than the average utilization for the market. In such cases, the compensation payments herein provided might cost the handler less than the equalization payments such plant would pay into the marketwide pool if fully regulated as a pool plant. In these instances, the sale of small quantities of milk in the marketing area would be more likely to take place under the compensation payment provisions herein provided than if full regulation were extended to all plants.

The rate of compensation payment provided for nonpool plants making distribution directly in the marketing area should be the same as that for pool plants which obtain and use unpriced milk in Class I. The administrative feasibility of any other method of levying compensation payments is substantially the same as that described in the case of unpriced milk distributed in the marketing area by pool plants.

No compensation payments should be required on milk classified and priced as Class I under another Federal milk marketing order. The minimum prices for Class I milk under other Federal orders where Texas Panhandle handlers might obtain supplemental supplies approximate or exceed the Texas Panhandle Class I prices, as adjusted for location of the supplying plants. Since handlers operating plants under other Federal orders must pay for producer milk on a utilization basis, they would not be in a position to unload their surplus producer milk into the Texas Panhandle market for Class I use at less than Class I prices. If it should develop that such other plants have Class I sales in excess of producer milk and a compensatory payment is not applicable to such milk, further consideration may be given to the question of a payment on such milk.

Any funds collected in the form of compensatory payments should be added to the producer-settlement fund. It is the purpose of the order to insure that a sufficient and dependable supply of quality milk be available for Class I needs of the market. To the extent that Class I sales are displaced through the disposition of surplus milk from unpriced sources, producers stand to lose income from the sale of milk to the market which they are expected to supply. This loss of income would mean that the prices contemplated under the order would not be realized by producers. As a result, production might suffer, in which case consumers would stand to lose because of the disappearance of milk supplies from the regular and dependable sources which have provided milk to the market on a year-round basis. Otherwise, Class I prices would have to be increased to offset the loss of income to producers. There is no alternative source of dependable milk supplies which would cost consumers less over a period of time than the milk supplied by the regular producers. Thus, there is justification in terms of overall benefit to the market for returning to producers the difference between the value of such milk at its opportunity cost, which would otherwise be its value to the seller, and the Class I price. There is no other alternative disposition of funds from compensation payments under the authority of the act other than that herein provided.

It is necessary that the order specify the handler who is obligated to make the compensation payments. If the unpriced milk is distributed in the marketing area from a nonpool plant, the operator of such plant should make the payment. In the case of supplemental milk received at pool plants from unpriced sources, either the buying or selling plant might be assessed. From the standpoint of the economics involved, it would make no difference, since the amount of payment would be the same in both cases.

From the standpoint of administration and enforcement, it would be much easier and simpler for the regulated plant to make the payment. The market administrator has regular dealings with the pool plant handler. Such handler would be expected to know and understand the terms and provisions of the order. He is the handler who assumes the responsibility for distributing the milk in the regulated market. Whether or not a compensation payment would be required would depend upon the application of the allocation provisions of the order to the pool plant of the receiving handler.

The seller, on the other hand, would not be aware until later whether a compensation payment would be required, and might not even know at the time of the sale, particularly if the sale took place through a broker, whether or not his milk would be moved to a regulated market for disposition. If enforcement proceedings were to be required, it would be more convenient and logical to bring the case to court in the area of the regulated market where the problem arose.

The compensation payments herein provided will not prohibit the marketing of milk nor limit the marketing of milk products from any production area of the United States. The rate of payment required would be uniform for all plants similarly situated with respect to their location in relation to the marketing area.

The quantity of milk and milk products which may be sold in any regulated market is dependent at least to some extent upon the price fixed under the order for the particular class of utilization. Such influence should not be construed, however, as a limitation of the type precluded under the act. No price can be fixed without influencing, to some extent, the quantity of milk and milk products which may be sold from either regulated or unregulated sources. No quantitative limitations are imposed in the proposed order on the amounts of unpriced milk which may be disposed of in the marketing area nor does it prohibit such use or any other use of unpriced nonpool milk or milk products. The compensation payment herewith provided will not discriminate against producers by areas, but will provide for equalization of competitive prices by type of transaction with respect to regulated and unregulated milk.

The payment will not deprive suppliers of unpriced milk of a high priced market which they would otherwise enjoy. The alternative sale value of the unpriced milk is recognized, and this value is returned to these sources when sale is made to the Texas Panhandle market. If marketing facilities and outlets are such that it is advantageous for nonpool plants to dispose of their surplus milk to the Texas Panhandle Class I market, under the provisions of the attached order, they may be expected to and undoubtedly will do so, and the return they receive should be the full surplus value for such milk.

The compensation payment herewith provided has as its primary purpose the elimination of economic incentives for handlers to use unpriced milk to displace minimum priced milk in Class I sales. The rate of payment found to be appropriate for this purpose is one which recognizes general competitive conditions in the purchase and sale of regulated and unregulated milk. It is recognized, however, that general competitive conditions do not prevail in all cases. Each handler is situated differently and each individual transaction is made under different circumstances. It is not possible, however, to adjust prices or payments to individual circumstances or transactions. Such an individual approach would not be administratively or economically feasible. Compensatory payments must therefore be applied at a definite and specified rate applicable to all handlers similarly situated. No single rate of payment can be determined, however, which would result in complete equality of cost to all handlers. Consequently, instances will undoubtedly arise which will appear to indicate that the objectives of the compensatory payment are not being achieved in particular cases. In some cases, the payments required may seem harsh.

It is necessary in seeking an overall solution to problems of this nature to adopt provisions which will be reasonable and as liberal as possible, and at the same time will still guarantee the integrity of regulation. To provide inadequate payments would leave the door open to practices which would render the program ineffective. Commerce in milk is entirely at the option of handlers. They are free to complete only those transactions which are most favorable to themselves. Order provisions must recognize this fact. They must recognize, also, that the varying conditions under which milk transactions occur give rise to great complexity and some doubtful circumstances. Where marginal problems arise, they must be resolved in favor of producers under the order, otherwise the advantage may go to unregulated milk and to dealers and farmers who are not required to abide by any rules of procedure or price making.

(d) *Distribution of the proceeds to producers.* A marketwide equalization pool should be included in the order as a means of distributing to producers the proceeds from the sale of their milk. Such a pool will assure each producer supplying the market that he will receive a return based on his pro rata share of the Class I sales of the entire market. The "blend", "base", and "excess" prices, as the case may be, that a producer receives will depend on the overall utilization of all producer milk received at the pool plants of all regulated handlers during the month. Although each handler subject to the order will be required to pay uniform prices for producer milk in accordance with the classification of such milk pursuant to the order, the minimum blend prices payable to producers will be the same for all producers in the market, irrespective of the use made of such milk by the individual handler.

The uniformity of payments to producers which is provided under a marketwide pool permits a handler either to maintain a manufacturing operation in his plant to handle the seasonal and daily reserve supplies of milk or to limit the operation at his plant to the handling of milk for Class I purposes only, without affecting the blend prices payable to his producers as against other producers in the market. The facilities in the plants of Texas Panhandle handlers for handling producer milk which is in excess of that needed for Class I purposes, vary considerably. Some of the handlers are equipped to handle limited amounts of the seasonal reserve supplies of milk in the market. Most of the Texas Panhandle handlers, however, have very limited facilities in their plants for the manufacture of dairy products. Under these conditions a marketwide pool in the Texas Panhandle marketing area will facilitate the marketing of producer milk. A marketwide pool will make it possible for the producers' associations to assist in diverting seasonal reserve milk and thus keeping producers on the market which are needed to fulfill the year-round requirements of the market. It assists in spreading the cost of carrying the necessary reserve for the market among all producers where otherwise this burden may be placed on individual groups of producers. A marketwide pool will thereby contribute to market stability and the attainment of an adequate and dependable supply of producer milk.

Base and excess plan. A "base and excess" plan of distributing the returns for milk among producers should be employed in connection with the marketwide pool.

Base and excess plans, although they vary considerably among handlers, have been commonly used throughout the milkshed area. The base and excess method of distributing milk returns during the months of heaviest production has wide support among both producers and handlers and should be continued. Interruption in the use of a base plan at this time might result in increased seasonality of production to the detriment of the market.

Because of the seasonal variations in the production of milk, there is need for an incentive to maintain production in the fall and winter months relative to spring and summer levels. Some handlers have difficulty in utilizing efficiently all milk delivered to them in the months of seasonally high production. By providing returns related directly to a producer's ability to deliver additional milk in the fall and winter as compared with deliveries during the season of flush production, a more even milk production pattern will be encouraged.

The base-excess plan provided in the attached order would establish for each producer in the market a base which would depend upon his deliveries of milk to pool plants during the months of September through December. During these months, as well as all other months in the period of July through February, producers would receive the marketwide blend or uniform price for all milk which they deliver to pool plants.

For each of the months of March through June separate uniform prices for "base milk" and "excess milk" would be computed so that Class I sales would first be allotted to base milk. Base milk would be milk received at a pool plant from a producer during any of the months of March through June which is not in excess of an amount equal to the daily base of such producer multiplied by the number of days in such month. Class II disposition in the market would first be allotted to excess milk. If Class I disposition is more than the base milk received from producers in any month, such additional Class I milk would be allocated to excess milk and the excess blend price increased accordingly.

The daily base of each producer would be calculated by the market administrator by dividing the total pounds of milk received at all pool plants from such producer during the months of September through December by the number of days from the first day such milk is received during those months to the last day of November, inclusive, but not less than 112 days. On or before February 15 of each year the market administrator would be required to notify each producer and the handler receiving milk from him, the daily base established by such producer.

It was proposed by producers that February also be included in the base operating period. The record does not indicate that February is a month of high production or that the handling of reserve supplies of milk for the Texas Panhandle market during that month is burdensome. In fact, in recent years producer receipts in the market during February have been comparatively low in relation to receipts in other months of the year.

The uniform prices, including uniform base and excess prices, which are required to be paid producers by each handler should be computed for milk containing 4.0 percent butterfat which is in accordance with past and current market practice. In distributing proceeds to producers, a differential should be applied to recognize different values of milk in accordance with its butterfat content. This differential should be determined on the basis of the weighted average value of producer butterfat according to its utilization at the class prices of the order.

Location differentials heretofore discussed should be applied to prices paid producers for base milk. Since excess milk will represent principally producer milk classified in Class II to which no location differential is applicable, the producer price for excess milk should likewise not be subject to the location differential provision of the order.

It is necessary to provide certain rules in connection with the establishment and transfer of bases in order to provide reasonable administrative workability of the plan. Such rules should outline specifically the method for calculating the base for each producer and set forth clearly and unequivocally the procedure to be followed for transferring bases. It is desirable that the need for administrative discretion and restrictive conditions in connection with the application of the base rules be kept at a minimum. To accomplish this, it is necessary that transfer of bases be limited to the entire base of a producer.

It is recognized, that a producer who adjusts his production under the base-excess plan to even out seasonal variations may suffer financial loss if he must discontinue production before having availed himself of the benefit of the base earned by him. It was proposed by producers at the hearing that in the event of death, retirement or entry into military service, a producer would be permitted to transfer his base to a member of his immediate family who carries on the dairy operations. In addition, it was proposed that a base be transferable by a producer discontinuing production to a person to whom the entire herd of such producer was sold.

The base rules relative to the transfer of bases which were proposed by producers lend themselves to various interpretations and would tend to result in numerous administrative determinations by the market administrator. For example, producers at the hearing were not explicit as to what would constitute retirement of a producer under this proposal.

The term "retirement" could be interpreted in numerous ways and by various standards to mean any producer who was going out of the dairy business. It would be impracticable for the market administrator to interpret such a term precisely. Moreover, regardless of the interpretation which may be applied, producers might be encouraged to resort to subterfuge if they stand to lose because of operation of the base rules. To circumscribe in an unnecessarily restrictive manner the rules for the transfer of bases might frequently result in undue hardship on producers who must liquidate their business at a time other than at the beginning of a base forming period.

A free transfer of entire bases as proposed herein will facilitate the operation and contribute toward carrying out the intent of the base-excess plan. The purpose of the base-excess plan is to encourage fall production by providing for each producer to share in the Class I market during the spring months of high production along with other producers in proportion to his deliveries to the market during the preceding fall months. Transfers of bases as herein recommended will give added assurance to a producer that he will have the full benefit of the base he has made whether or not he is able to continue milk production for his own account through the following months of flush production. This assurance should increase the effectiveness of the base-excess plan in encouraging production of milk during the months of the year when it is most needed on the market.

Bases should be transferred by the market administrator to be effective only on the first day of a month following receipt of a statement, on an approved form, showing the holder of such base, the person to whom it is to be transferred and signed by both parties.

Payment to producers. The order should provide that each handler shall pay each producer for milk received from such producer, and for which payment is not made to a cooperative association, at not less than the applicable uniform price(s) on or before the 15th day after the end of each month. Since it has been the practice in this area for handlers to pay producers semi-monthly, provision should be made for partial payments to such producers on or before the last day of each month for milk delivered during the first 15 days of such month at not less than the Class II milk price per hundredweight for the preceding month. No adjustment for butterfat content is required on such partial payment.

It was proposed by producers that provision be made for a cooperative association to receive payment for the producer milk which it causes to be delivered to a pool plant. The taking of title to milk of its members and the blending of the proceeds from the sale of such milk will tend to promote the orderly marketing of milk and will assist the cooperative association in discharging its responsibility to its members and to the market and such functions can be accomplished more expediently if the association is collecting payments for the sales of members milk.

The contract with its members of the principal cooperative in the market authorizes it to collect payment for their milk. The act provides for the payment by handlers to cooperative associations of producers for milk delivered by them and permits the blending of all proceeds from the sale of members' milk. It is concluded, therefore, that each handler shall, if requested in writing by a cooperative association, pay such association an amount equal to the sum of the individual payments otherwise payable to such producers. Handlers should be required to make such payments to the cooperative association on or before the 26th of the month for milk received during the first 15 days of the month and make the final settlement for milk received during the month on or before the 13th day of the following month.

Provision should also be made for the handler, if authorized in writing by the producer, to make proper deductions for goods or services furnished to or for payments made on behalf of the producer. At the time final settlement is made for milk received from producers during the month, the handler should be required to furnish to each producer a supporting statement. Such statement should show the pounds and butterfat tests of milk received from him, the rate(s) of payment for such milk and a description of any deductions claimed by the handler.

Producer-settlement fund. Because all producers will receive payment at the rate of the marketwide uniform price(s) each month and because the payment due from each handler for producer milk at the applicable class prices may be more or less than he is required to pay directly to producers, a method of equalizing this difference is necessary. A producer-settlement fund should be established for this purpose. A handler whose obligation for producer milk received during the month is greater than the amount he is required to pay producers for such milk at the applicable uniform price(s) would pay the difference into the producer-settlement fund, and each handler whose obligation for producer milk is less than the applicable uniform price value would receive payment of the difference from the fund. Provision for the establishment and maintenance of the producer-settlement fund as set forth in the attached order is similar to that contained in all other Federal orders with marketwide pools.

Experience has indicated that it is desirable to set aside a reasonable reserve or balance in such fund at the end of each month. Such a reserve is necessary in order to provide for contingencies such as the failure of a handler to make payment of his monthly billing to the fund or the payment to a handler from the fund by reason of an audit adjustment. The reserve, which would be operated as a revolving fund and adjusted each month, is established in the attached order at not less than four nor more than five cents per hundredweight of producer milk in the pool for the month. The unobligated balance in the producer-settlement fund remaining from the preceding month would be added to the values used in calculating the uniform prices each month. The amount of the reserve which is provided herein should be adequate to enable the producer-settlement fund to perform its function efficiently.

As indicated elsewhere in this decision, compensatory payments received by the market administrator from any handler would be deposited in the producer-settlement fund. Money thus deposited into the producer-settlement fund would be included in the uniform price computation and thereby be distributed to all producers on the market.

In order that producers may be paid in full no later than on the dates prescribed in the order, it is necessary that payments owed the producer-settlement fund be made promptly. This is necessary so that money will be available to the market administrator to make payment to those handlers to whom money is due from the fund so that they may make payment in full to their producers. A handler's failure to make payment when due to the producer-settlement fund could obstruct the clearing of the producer equalization pool.

Sufficient time is provided in the order between the billing date and the due date of the various payments which are required to be made to the market administrator. If payments to the market administrator are not made when due, interest should be charged at the rate of 6 percent per annum. Such charge is not a penalty but represents a fair interest rate for the use of money. Charging interest will avoid giving a handler any incentive to retain money temporarily for use in his business at no cost until compliance can be enforced.

If at any time the balance in the producer-settlement fund is insufficient to cover payments due to all handlers from the producer-settlement fund, payments to such handlers would be reduced uniformly per hundredweight of milk. The handlers may then reduce payments to producers by an equivalent amount. The remaining amounts due such handlers from the fund would be paid as soon as the balance in the fund becomes adequate to meet such payments, and handlers would then complete payments to producers. In order to reduce the possibility of this occurring, milk received by any handler who has not made the payments required of him into the producer-settlement fund would be eliminated in the computation of the uniform prices in subsequent months until such handler has completed all delinquent payments.

(e) *Administrative provisions.* Provisions should be included in the order with respect to the administrative steps necessary to carry out the proposed regulation.

In addition to the definitions discussed earlier in this decision which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term denotes the same meaning. Such terms as are defined in the attached order are common to many other Federal milk orders.

Market Administrator. Provision should be made for the appointment by the Secretary of a market administrator to administer the order and to set forth the powers and duties for such agency essential to the proper functioning of such office.

Records and reports. Provisions should be included in the order requiring handlers to maintain adequate records of their operations and to make reports necessary to establish classification of producer milk and payments due therefor. Time limits must be prescribed for filing such reports and for making the payments to producers.

Handlers should maintain and make available to the market adminstrator all records and accounts of their operations, together with facilities which are necessary to determine the accuracy of information reported to the market administrator or any other information upon which the classification of producer milk depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled, and to verify all payments required under the order.

As indicated elsewhere in this decision detailed reports to the market administrator and complete records available for his inspection by all handlers would be used to determine whether the plants of such handlers qualify as pool plants. Reports of handlers operating nonpool plants from which fluid milk products are distributed in the marketing area are needed by the market administrator in order to compute the amounts payable to the producer-settlement fund on such unpriced milk.

In addition to the regular reports required of handlers, provision is made for a handler to notify the market administrator when he intends to divert producer milk or when he intends to import other source milk. This will facilitate the check-testing program of the market administrator. Such information on a marketwide basis also may assist handlers in locating local sources of producer milk and expedite the transfer of such milk among handlers.

It is necessary that handlers retain records to prove the utilization of the milk and that proper payments were made to producers. Since the books and records of all handlers cannot be completed or audited immediately after the milk has been delivered to a plant, it therefore becomes necessary to keep such records for a reasonable period of time.

The order should provide limitations on the period of time handlers shall be required to retain such books and records and on the period of time in which obligations under the order shall terminate. Provision made in this regard is identical in principle with the general amendment made to all milk orders in operation on July 30, 1947, following the Secretary's decision of January 26, 1949 (14 F. R. 444). That decision covering the retention of records and limitation of claims is equally applicable in this situation and is adopted as a part of this decision.

Expense of administration. Each handler should be required to pay the market administrator, as his pro rata share of the cost of administering the order, not more than 5 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, on (a) producer milk, (b) other source milk at a pool plant which is classified as Class I milk, and (c) Class I milk disposed of on routes in the marketing area from a nonpool plant which is not fully subject to the classification, pricing and pooling provisions of another order issued pursuant to the act.

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The act provides that such cost of administration shall be financed through an assessment on handlers. One of the duties of the market administrator is to verify the receipts and disposition of milk from all sources. The record indicates that other source milk is received by some handlers to supplement local producer supplies of milk. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment to all producer milk (which includes a handler's own production) and other source milk allocated to Class I milk.

Plants not subject to the classification and pricing provisions of the order may distribute limited quantities of Class I milk in the marketing area. The records of such plants must be checked to verify their status under the order. Assessment of administrative expense with respect to such milk sold in the marketing area will help to defray the costs of such verification.

In view of the anticipated volume of milk and the costs of administering orders in markets of comparable circumstances, it is concluded that an initial rate of 5 cents per hundredweight is necessary to meet the expenses of administration. Provision should be made to enable the Secretary to reduce the rate of assessment below the 5 cents per hundredweight maximum without necessitating an amendment to the order. This should be done at any time experience in the market reveals that a lesser rate will produce sufficient revenue to administer the order properly.

Marketing services. Provision should be made in the order for furnishing marketing services to producers, such as verifying of tests and weights and furnishing market information. These services should be provided by the market administrator and the cost should be borne by the producer receiving the service. If a cooperative association is performing such services for any member producers and is approved for such activities by the Secretary, the market administrator may accept this in lieu of his own service.

There is a need for a marketing services program in connection with the administration of an order in this area. Orderly marketing will be promoted by assuring individual producers that payments received for their milk are based on the pricing provisions of the order, and reflect accurate weights and tests of such milk. To accomplish this fully, it is necessary that the butterfat tests and weights of individual producer deliveries of milk as reported by the handler be verified for accuracy.

An important phase of the marketing service program is to furnish producers with current market information. Detailed information regarding market conditions is not now regularly available either to producers or to cooperative associations. Efficiency in the production, utilization and marketing of milk will be promoted by the dissemination of current information on a marketwide basis to all producers.

To enable the market administrator to furnish such services, provision should be made for a maximum deduction of 6 cents per hundredweight with respect to receipts of milk from producers for whom he renders marketing services. Comparison of the extent of the milkshed and the volume of milk involved with that of several other markets now under Federal regulation indicates that this will reflect the maximum cost of such services. If later experience indicates that marketing services can be performed at a lesser rate, provision is made for the Secretary to adjust the rate downward without the necessity of a hearing.

General Findings. (a) The proposed marketing agreement and the order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply of and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(c) The proposed order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Rulings on proposed findings and conclusions. Written arguments and proposed findings and conclusions submitted on behalf of interested persons were considered, along with the evidence in the record, in making the findings and reaching the conclusions herein set forth. To the extent that the proposed findings and conclusions differ from the findings and conclusions contained herein, the specific or implied requests to make such findings are denied because of the reasons stated in support of the findings and conclusions in this decision.

Recommended marketing agreement and order. The following order is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be identical with those contained in the order.

DEFINITIONS

§ 911.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 911.2 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

§ 911.3 *Department.* "Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 911.4 *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 911.5 *Cooperative association.* "Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 911.6 *Texas Panhandle marketing area.* "Texas Panhandle marketing area," hereinafter called the "marketing area," means all the territory within the counties of Armstrong, Briscoe, Carson, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchison, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman and Wheeler, all in the State of Texas.

§ 911.7 *Producer.* "Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (a) received at a pool plant, or (b) diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association (1) any day during the months of March through June and (2) on not more than 15 days during any of the months of July through February: *Provided,* That milk diverted pursuant to this section shall be deemed to have been received at the location of the plant from which diverted.

§ 911.8 *Distributing plant.* "Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 911.9 *Supply plant.* "Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 911.10 (a).

§ 911.10 *Pool plant.* "Pool plant" means:

(a) A distributing plant from which a volume of Class I milk equal to not less than 50 percent of the Grade A milk received at such point from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area: *Provided,* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(b) A supply plant from which the volume of fluid milk products shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided,* That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year: *And provided further,* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

§ 911.11 *Nonpool plant.* "Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 911.12 *Handler.* "Handler" means: (a) Any person in his capacity as the operator of one or more distributing or supply plants, or (b) any cooperative association with respect to the milk from producers diverted by the association for the account of such association from a pool plant to a nonpool plant.

§ 911.13 *Producer-handler.* "Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers.

§ 911.14 *Producer milk.* "Producer milk" means only that skim milk or butterfat contained in milk (a) received at the pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 911.7.

§ 911.15 *Fluid milk product.* "Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream, or any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products, eggnog, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

§ 911.16 *Other source milk.* "Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 911.17 *Chicago butter price.* "Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

§ 911.18 *Base milk.* "Base milk" means milk received at a pool plant from a producer during any of the months of March through June which is not in excess of such producer's daily base computed pursuant to § 911.95 multiplied by the number of days in such month.

§ 911.19 *Excess milk.* "Excess milk" means milk received at a pool plant from a producer during any of the months of March through June which is in excess of base milk received from such producer during such month, and milk received during such month from a producer for whom no base can be computed pursuant to § 911.95.

MARKET ADMINISTRATOR

§ 911.25 *Designation.* The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 911.26 *Powers.* The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 911.27 *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 911.88 (1) the cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 911.87, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 911.30 and 911.31, or payments pursuant to §§ 911.80, 911.84, 911.86, 911.87, and 911.88;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The 5th day of each month, the minimum price for Class I milk, pursuant to § 911.51 (a), and the Class I butterfat differential, pursuant to § 911.52 (a), both for the current month; and the minimum price for Class II milk, pursuant to § 911.51 (b), and the Class II butterfat differential, pursuant to § 911.52 (b), both for the preceding month;

(2) The 10th day after the end of the months of July through February the uniform price pursuant to § 911.72 and the producer butterfat differential pursuant to § 911.81;

(3) The 10th day after the end of each of the months of March through June, the uniform prices for base milk and excess milk pursuant to § 911.73 and the producer butterfat differential pursuant to § 911.81; and

(k) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

REPORTS, RECORDS AND FACILITIES

§ 911.30 *Reports of receipts and utilization.* On or before the 7th day after the end of each month, each handler, except a producer handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk, and the aggregate quantities of base and excess milk;

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 911.7;

(e) Inventories of fluid milk products on hand at the beginning and end of the month; and

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area.

§ 911.31 *Other reports.* (a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month for each of his pool plants his producer payroll for such month which shall show for each producer: (i) His name and address, (ii) the total pounds of milk received from such producer, including, for the months of March through June, the total pounds of base and excess milk, (iii) the number of days, if less than the entire month for which milk was received from such producer, (iv) the average butterfat content of such milk, and (v) the net amount of such handler's payment, together with the price paid and the amount and nature of any deductions;

(2) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product;

(3) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted; and

(4) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

§ 911.32 *Records and facilities.* Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk, skim milk, cream and other milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations including the amount and nature of any deductions and the disbursement of money so deducted.

§ 911.33 *Retention of records.* All books and records required under this subpart to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 911.40 *Skim milk and butterfat to be classified.* The skim milk and butterfat which are required to be reported pursuant to § 911.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 911.41 through 911.46.

§ 911.41 *Classes of utilization.* Subject to the conditions set forth in § 911.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of a fluid milk product (except as provided in paragraph (b) (2) of this section) and (2) not accounted for as Class II milk:

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) disposed of and used for livestock feed; (3) contained in inventory of fluid milk products on hand at the end of the month; and (4) in shrinkage allocated to receipts of producer milk and other source milk (except milk diverted to a nonpool plant pursuant to § 911.7) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively.

§ 911.42 *Shrinkage.* The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

§ 911.43 *Responsibility of handlers and reclassification of milk.* (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise;

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 911.44 *Transfers.* Skim milk or butterfat disposed of each month from a pool plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to the pool plant of another handler, except a producer-handler, unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 911.30: *Provided,* That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 911.46 and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further,* That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk, if transferred to a producer-handler in the form of fluid milk product;

(c) As Class I milk, if transferred or diverted in the form of a fluid milk product to a nonpool plant located more than 300 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area;

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located not more than 300 miles by the shortest highway distance as determined by the market administrator from the nearest point in the marketing area unless:

(1) The transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 911.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in the fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who the market administrator determines constitute the regular source of supply for such plant: *Provided,* That any skim milk or butterfat in fluid milk products (except in ungraded cream disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farmers shall be assigned to the fluid milk products so transferred or diverted and classified as Class I milk: *And provided further,* That if the total skim milk and butterfat in fluid milk products which were transferred by all handlers to such nonpool plant during the month is less than the skim milk and butterfat classified as Class I milk pursuant to the preceding proviso hereof, the assignment to Class I milk shall be prorated over the claimed Class II classification reported by each such handler on transfers to the nonpool plant.

§ 911.45 *Computation of the skim milk and butterfat in each class.* For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided,* That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water reasonably associated with such solids in the form of whole milk.

§ 911.46 *Allocation of skim milk and butterfat classified.* After making the computations pursuant to § 911.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 911.41 (b) (4);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing provisions of an order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;

(4) Subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(5) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source received in the form of fluid milk products which are subject to the Class I pricing provisions of another order issued pursuant to the act;

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 911.44 (a);

(8) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(9) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 911.50 *Basic formula price.* The basic formula price shall be the highest of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest cent.

(a) The average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following milk plants for which prices have been reported to the market administrator or to the Department, divided by 3.5 and multiplied by 4.0:

Present Operator and Location

Borden Co., Mount Pleasant, Mich.
Carnation Co., Sparta, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Clarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price obtained by adding together the amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Subtract 3 cents from the Chicago butter price and multiply the remainder by 4.8; and

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f. o. b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 8.16.

§ 911.51 *Class prices.* Subject to the provisions of §§ 911.52 and 911.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* From the effective date of this part through August, 1957, the Class I milk price shall be the basic formula price for the preceding month, plus $2.15 during the months of July through February and plus $1.85 during all other months.

(b) *Class II milk price.* The Class II milk price shall be:

(1) For the months of March through June, the average of the prices reported to have been paid or to be paid for ungraded milk of 4 percent butterfat content received from farmers during the month at the following plants for which prices have been reported to the market administrator or the Department:

Present Operator and Location

Plains Creamery, Arnett, Okla.
Price Creamery, Portales, N. Mex.
Quint County Creamery, Mangum, Okla.
Swisher County Creamery, Tulia, Tex.

(2) For the months of July through February, the higher of the prices computed pursuant to subparagraph (1) of this paragraph and paragraph (b) of § 911.50.

§ 911.52 *Butterfat differentials to handlers.* For milk containing more or less than 4.0 percent butterfat, the class prices for the month calculated pursuant to § 911.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.120.

(b) *Class II prices.* Multiply the Chicago butter price for the current month by 0.110.

§ 911.53 *Location differentials to handlers.* For that milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to the proviso of this section, or otherwise classified as Class I milk, the price specified in § 911.51 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles):	*Rate per hundredweight (cents)*
100 but less than 110	35.0
For each additional 10 miles or fraction thereof an additional	1.6

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 911.46 (a) (5), and the comparable steps in (b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 911.54 *Use of equivalent prices.* If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 911.60 *Producer-handlers.* Sections 911.40 through 911.46, 911.50 through 911.53, 911.70 through 911.73, 911.80 through 911.88, and 911.95 through 911.97 shall not apply to a producer-handler.

§ 911.61 *Plants subject to other Federal orders.* The provisions of this part shall not apply to a distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless: (a) Such plant is qualified as a pool plant pursuant to § 911.10 (a) and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets (excluding pool plants) in the Texas Panhandle marketing area than in the marketing area regulated pursuant to such other order, or (b) such plant is qualified as a pool plant pursuant to § 911.10 (b): *Provided*, That the operator of a distributing plant or a supply plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 911.30) and allow verification of such reports by the market administrator.

§ 911.62 *Handlers operating nonpool plants.* None of the provisions from §§ 911.44 through 911.53, inclusive, or from §§ 911.70 through 911.85, inclusive, shall apply in the case of a handler in his capacity as the operator of a nonpool plant, except that such handler shall, on or before the 13th day after the end of each month, pay to the market administrator for deposit into the producer-settlement fund an amount calculated by multiplying the total hundredweight of butterfat and skim milk disposed of as Class I milk from such plant to retail or wholesale outlets (including sales by vendors and plant stores) in the marketing area during the month, by the rate determined pursuant to § 911.63.

§ 911.63 *Rate of payment on unpriced milk.* The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount calculated as follows:

(a) During the months of March through June, subtract from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through February subtract from the Class I price f. o. b. such nonpool plant the uniform price to producers adjusted by the Class I butterfat differential.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 911.70 *Computation of value of milk for each handler.* The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 911.46 (a) (9) and the corresponding step of (b) by the applicable class prices;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II less shrinkage during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 911.46 (a) (8) and the corresponding step of (b), whichever is less; and

(d) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 911.46 (a) (2) and (3) and the corresponding step of (b), by the rate of payment on unpriced milk determined pursuant to § 911.63 at the nearest nonpool plant(s) from which an equivalent amount of other source skim milk or butterfat was received: *Provided*, That if the source of any such fluid milk product received at a pool plant is not clearly established or if such skim milk and butterfat is received or used in a form other than as a fluid milk product such product shall be considered to have been received from a source at the location of the pool plant where it is classified.

§ 911.71 *Computation of aggregate value used to determine uniform prices.* For each month the market administrator shall compute an aggregate value from which to determine uniform prices per hundredweight for producer milk, of 4.0 percent butterfat content, f. o. b. plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Combine into one total the values computed pursuant to § 911.70 for all handlers who made the reports prescribed in § 911.30 for such month, except those in default of payments required pursuant to § 911.84 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 4.0 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 911.82; and

(d) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund.

§ 911.72 *Computation of uniform price.* For each of the months of July through February, the market administrator shall compute a uniform price for producer milk of 4.0 percent butterfat content f. o. b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) Divide the aggregate value computed pursuant to § 911.71 by the total hundredweight of producer milk included in such computations; and

(b) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (a) of this section. The resulting figure shall be the uniform price for producer milk.

§ 911.73 *Computation of uniform prices for base milk and excess milk.* For each of the months of March through June, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 4.0 percent butterfat content, f. o. b. pool plants located within 100 miles of the City Hall of Amarillo, Texas, as follows:

(a) From the reports submitted by handlers pursuant to § 911.30, determine the aggregate classification of producer milk included in the computation of value pursuant to § 911.71 and the total hundredweight of such milk which is base milk and which is excess milk;

(b) Determine the value of such excess milk on a 4 percent butterfat basis by multiplying the total hundredweight of such milk which is not greater than the total Class II milk pursuant to paragraph (a) of this section by the Class II milk price and by adding thereto the value obtained by multiplying the hundredweight of such excess milk which is greater than the quantity of such Class II milk by the Class I milk price;

(c) Divide the value of excess milk obtained in paragraph (b) of this section by the total hundredweight of such milk, and subtract not less than 4 nor more than 5 cents from the price thus computed. The resulting figure shall be the uniform price for excess milk;

(d) Subtract the value of excess milk obtained in paragraph (c) of this section from the aggregate value of all milk obtained in § 911.71; and

(e) Divide the amount obtained in paragraph (d) of this section by the total hundredweight of base milk obtained in paragraph (a) of this section, and subtract not less than 4 cents nor more than 5 cents from the price thus computed. The resulting figure shall be the uniform price for base milk.

§ 911.80 *Time and method of payment for producer milk.* Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class II price for the preceding month;

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform prices per hundredweight pursuant to §§ 911.72 and 911.73 subject to the butterfat differential computed pursuant to § 911.81 plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location differential deductions pursuant to § 911.82, (3) marketing service deductions pursuant to § 911.87 and (4) proper deductions authorized by such producer: *Provided*, That if such handler has not received full payment for such month pursuant to § 911.85 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator;

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 13th and 26th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer, including for the months of March through June, the pounds of base milk and excess milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 911.81 *Butterfat differentials to producers.* The applicable uniform prices to be paid each producer pursuant to § 911.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 911.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 911.82 *Location differentials to producers.* In making payment pursuant to § 911.80 the uniform price pursuant to § 911.72 and the uniform price for base milk pursuant to § 911.73 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles):	*Rate per hundredweight (cents)*
100 but less than 110	35.0
For each additional 10 miles or fraction thereof an additional	1.6

§ 911.83 *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 911.62, 911.84, and 911.86, and out of which he shall make all payments pursuant to §§ 911.85 and 911.86: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

§ 911.84 *Payments to the producer-settlement fund.* On or before the 12th day after the end of each month each handler shall pay to the market administrator the amount by which the value of milk for such handler, pursuant to § 911.70, for such month exceeds the obligation, pursuant to § 911.80, of such handler to producers for milk received during the month.

§ 911.85 *Payments out of the producer-settlement fund.* On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount by which the obligation, pursuant to § 911.80, of such handler to producers for milk received during the month exceeds the value of milk for such handler computed pursuant to § 911.70. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

§ 911.86 *Adjustment of errors in payment.* Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 911.84, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 911.85, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 911.80, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 911.87 *Marketing services.* (a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 911.80 (b), shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) *Producers' cooperative associations.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 911.88 *Expense of administration.* As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator, on or before the 15th day after the end of each month, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to butterfat and skim milk contained in (a) producer milk, (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 911.46, and (c) Class I milk disposed of in the marketing area (except to a pool plant) from a nonpool plant not subject to the classification and pricing provisions of another order issued pursuant to the act.

§ 911.89 *Adjustment of overdue accounts.* There shall be added to any balance due the market administrator pursuant to §§ 911.62, 911.84, 911.86, 911.87, and 911.88 an amount equal to one-half of one percent of such balance for each month or any portion thereof that payment of the balance is overdue.

§ 911.90 *Termination of obligations.* The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c (15) (A) of the act, a petition claiming such money.

DETERMINATION OF BASE

§ 911.95 *Daily base.* The daily base for each producer shall be the amount obtained by dividing the total pounds of producer milk received from such producer by all handlers during the months of September through December immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of December inclusive, less the number of days for which no deliveries are made, but not less than 112 days.

§ 911.96 *Base rules.* The following rules shall apply in connection with the establishment of bases:

(a) A base shall apply to deliveries of milk by the producer for whose account that milk was delivered during the months of September through December;

(b) An entire base shall be transferred from a person holding such base to any other person effective as of the first day of any month following receipt by the market administrator of an application for such transfer. Such application shall be on a form approved by the market administrator and shall be signed by the baseholder and by the person to whom such base is to be transferred: *Provided,* That if a base is held jointly, the entire base shall be transferable only upon receipt of such application signed by all joint holders.

§ 911.97 *Announcement of established bases.* On or before February 15 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer of the daily base established by such producer.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 911.100 *Effective time.* The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 911.101 *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of this part, whenever he finds that it obstructs or does not tend to effectuate the declared policy of the act. This part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 911.102 *Continuing power and duty of the market administrator.* (a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment or which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 911.103 *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under this control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 911.110 *Separability of provisions.* If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 911.111 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

Issued at Washington, D. C., this 4th day of October 1955.

[SEAL] Roy W. Lennartson,
Deputy Administrator,

[F. R. Doc. 55-8141; Filed, Oct. 6, 1955; 8:51 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 1, 130]

Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act; New Drugs

EXTENSION OF TIME FOR FILING WRITTEN COMMENTS UPON PROPOSED RULE MAKING

On September 8, 1955, a notice of proposed rule making concerning new drugs was published in the Federal Reg-

ISTER (20 F. R. 6584). Interested persons were given 30 days to submit their views in writing to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C.

The Commissioner of Food and Drugs, having been requested to extend the time within which such written documents may be filed: *It is ordered*, That the time for filing written comments be extended until November 8, 1955, and that such extension shall apply to all interested persons.

Dated: October 3, 1955.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 55-8131; Filed, Oct. 6, 1955; 8:48 a. m.]

NOTICES

DEPARTMENT OF DEFENSE

Department of the Army

DESCRIPTION OF CENTRAL AND FIELD AGENCIES

STATEMENT OF ORGANIZATION AND FUNCTIONS

Paragraph (e) of section 1 of the Statement of organization and functions of the Department of the Army, appearing at 15 F. R. 6639, October 3, 1950, and amended at 16 F. R. 8144, August 16, 1951, 19 F. R. 6349, October 1, 1954, 20 F. R. 691, February 1, 1955, 20 F. R. 1382, March 8, 1955, and 20 F. R. 5238, July 21, 1955, is further amended by revising subparagraph (6) and adding subparagraph (6-1), as follows:

SECTION 1. *Description of Central and Field Agencies.* * * *

(e) *Organization of Department of the Army.* * * *

(6) *Deputy Chief of Staff for Plans.* The Deputy Chief of Staff for Plans is responsible to the Chief of Staff for directing, supervising, and coordinating development of all Army plans and Primary Programs, and as the Army Operations Deputy of the Joint Chiefs of Staff, for advising the Chief of Staff on Joint Chiefs of Staff matters and representing the Chief of Staff in the Joint Chiefs of Staff organization as appropriate.

(6-1) *Chief of Research and Development*—(i) *General.* The Chief of Research and Development is responsible to the Chief of Staff for planning, coordinating, directing, and supervising all Army research and development. Within his scope of responsibility, the Chief of Research and Development's relationship to the Chief of Staff and the Army Staff corresponds to that of a Deputy Chief of Staff. In the fulfillment of his responsibilities, the Chief of Research and Development deals directly with the technical staffs and services but coordinates closely with the Deputy Chief of Staff for Logistics before issuing any directives. (Personnel and funds for research and development activities of the technical services will be allotted to the Deputy Chief of Staff for Logistics and suballotted by the Deputy Chief of Staff for Logistics to the technical services as requested by the Chief of Research and Development.)

(ii) *Major functions*—(a) *Policies plans, and programs.* Formulates, coordinates, directs, and supervises the execution of Army research and development policies, plans, and programs, including those pertaining to operations, human resources, and global environmental research; monitors the materiel segment of the Army Combat Development Program; supervises engineering and user test programs; and effects coordination of the Army's research and development programs with other Army programs and activities, as necessary.

(b) *Research and development projects and priorities.* Assigns and allocates responsibility for research and development projects; assigns and revises research and development project priorities in consonance with Army plans; and recommends, to the Deputy Chief of Staff for Logistics, construction priorities for research and development facilities.

(c) *Military characteristics of new items.* Formulates and establishes, in coordination with interested Department of the Army agencies, the Department of the Army position with respect to new inventions and the military characteristics of new items.

(d) *Qualitative requirements.* Establishes, in coordination with interested Department of the Army agencies, a Department of the Army position on qualitative requirements for items of equipment to be used by the Army.

(e) *Combat and technical intelligence.* In coordination with the Assistant Chief of Staff, G-2, monitors research and development aspects of combat and technical intelligence.

(f) *Scientific manpower.* Plans, coordinates, and supervises Army programs for the utilization of scientific manpower, in consonance with manpower utilization policies of the Army Establishment.

(g) *Standardization programs.* Establishes policies and procedures for and supervises Army participation in the American-British-Canadian Army Standardization Program, the Mutual Weapons Development Program, and the research and development portion of the North Atlantic Treaty Organization Materiel Standardization Program; and makes recommendations to the Deputy Chief of Staff for Logistics regarding requests by the British and Canadian governments for the loan of standard equipment under the provisions of the ABC Army Standardization Program.

(h) *Army plans and estimates.* Prepares the research and development section of Army plans and estimates as appropriate. Furnishes the Deputy Chief of Staff for Plans with estimates of technological progress under Research and Development Programs and estimates of technological capabilities for specific periods of time.

(i) *Budget.* In conformance with policies and procedures established by the Comptroller of the Army, assists in the preparation and execution of the research and development portions of the Army budget. Provides the Deputy Chief of Staff for Logistics with implementing instructions for inclusion in logistics budget directives to the technical services.

[SEAL] JOHN A. KLEIN,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 55-8116; Filed, Oct. 6, 1955; 8:45 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Order 599]

HEARINGS OFFICER

DELEGATION OF AUTHORITY TO ACT FOR DIRECTOR

OCTOBER 3, 1955.

1. Pursuant to section 1.5 of Order No. 2583, as amended February 16, 1954 (19 F. R. 1021), John R. Rampton, Jr. and Graydon Holt are hereby designated to perform the functions of hearings officers for the Director.

2. The above designated persons are authorized to conduct and preside at such contests and hearings as may be assigned to them from time to time and to render decisions thereon to the same effect and in the same manner as the managers of land offices are authorized by section 1.4 of Order No. 2583, and otherwise.

3. They shall conduct such proceedings and shall take all necessary actions with respect thereto, including the issuance of decisions, in accordance with the applicable laws, and the regulations (Title 43 of the Code of Federal Regulations, particularly Parts 220, 221, 222 and 223 thereof). Such actions shall be subject to the right of appeal to the Director to the same extent as similar actions of the managers. All actions in a proceeding before them shall be signed by the designees as "Hearings Officer."

4. The authority herein granted shall in no way interfere with or diminish the authority of the land office managers with respect to proceedings not assigned to the hearings officers.

EDWARD WOOZLEY,
Director.

[F. R. Doc. 55-8117; Filed, Oct. 6, 1955; 8:45 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

FRESH IRISH POTATOES

NOTICE OF DIVERSION PAYMENT PROGRAM WMD 3a

In order to encourage the further utilization of fresh Irish potatoes by diverting them from the normal channels of trade and commerce into the manufacture of potato starch and potato flour, in accordance with Section 32, Public Law 320, 74th Congress, approved August 24, 1935, as amended, a diversion payment program was made effective on September

15, 1955, and will continue as needed to and including June 30, 1956, in areas where potato surpluses have created serious marketing problems and where starch and flour manufacturing facilities are available. Payments will be made to processors who participate in the program under contracts with the Department of Agriculture, for potatoes of the specified minimum grade and size diverted into the manufacture of starch and flour. The rate of diversion payment per 100 pounds of potatoes meeting the requirements of Diversion Specification A, which are diverted as prescribed, will be 50 cents for potatoes diverted during the months of September, October, November and December, 1955; 40 cents during the months of January, February, and March, 1956; and 30 cents during the months of April, May, and June 1956. Information relative to this diversion program may be obtained from: Fruit and Vegetable Division, Agricultural Marketing Service, Department of Agriculture, Washington 25, D. C.

(Sec. 32, 49 Stat. 774, as amended, 7 U. S. C. and Sup. 612c)

Done at Washington, D. C., this 4th day of October, 1955.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 55-8138; Filed, Oct. 6, 1955; 8:50 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 4294]

NORTHWEST AIRLINES, INC., PITTSBURGH RESTRICTION

NOTICE OF PREHEARING CONFERENCE

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on October 17, 1955, at 10:00 a. m., e. s. t., in Room E-206, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner James S. Keith.

Dated at Washington, D. C., October 4, 1955.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 55-8136; Filed, Oct. 6, 1955; 8:49 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-2534 etc.]

ALABAMA-TENNESSEE NATURAL GAS CO. ET AL.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

OCTOBER 3, 1955.

In the matters of Alabama-Tennessee Natural Gas Company, Docket No. G-2534; Tennessee Gas Transmission Company, Docket No. G-8805; The Superior Oil Company, Docket No. G-8812; United Gas Pipe Line Company, Docket No. G-8813; The California Company, Docket Nos. G-8817 and G-8818; Shell Oil Company, Docket No. G-8837; East Tennessee Natural Gas Company, Docket No. G-8899; E. J. Hudson, et al., Docket No. G-8938; M. L. Mayfield Company, et al., Docket No. G-8971.

Notice is hereby given that on September 23, 1955, the Federal Power Commission issued its findings and order adopted September 21, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8121; Filed, Oct. 6, 1955; 8:46 a. m.]

[Docket No. E-6633]

ST. JOSEPH LIGHT & POWER CO.

NOTICE OF ORDER AUTHORIZING MERGER OF FACILITIES

OCTOBER 3, 1955.

Notice is hereby given that on September 22, 1955, the Federal Power Commission issued its order adopted September 21, 1955, authorizing merger or consolidation of facilities in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8122; Filed, Oct. 6, 1955; 8:46 a. m.]

[Docket No. E-6641]

PACIFIC POWER & LIGHT CO.

NOTICE OF ORDER AUTHORIZING ISSUANCE OF SECURITIES

OCTOBER 3, 1955.

Notice is hereby given that on September 21, 1955, the Federal Power Commission issued its order adopted September 21, 1955, authorizing issuance of securities in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8123; Filed, Oct. 6, 1955; 8:46 a. m.]

[Docket No. G-3911]

PAUL E. KAHLE

NOTICE OF ORDER VACATING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

OCTOBER 3, 1955.

Notice is hereby given that on September 22, 1955, the Federal Power Commission issued its order adopted September 21, 1955, vacating order issuing certificate of public convenience and necessity in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8124; Filed, Oct. 6, 1955; 8:46 a. m.]

[Docket Nos. G-4870, G-6998]

LAMAR HUNT ET AL.

NOTICE OF FINDINGS AND ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

OCTOBER 3, 1955.

In the matters of Lamar Hunt, Docket No. G-4870; Mercantile National Bank at Dallas, trustee of the M. J. Florance Trust, Docket No. G-6998.

Notice is hereby given that on September 26, 1955, the Federal Power Commission issued its findings and orders adopted September 21, 1955, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8125; Filed, Oct. 6, 1955; 8:46 a. m.]

[Docket Nos. G-8614, G-8695]

PAN AMERICAN PRODUCTION CO. AND PHILLIPS PETROLEUM CO.

NOTICE OF ORDERS MAKING EFFECTIVE PROPOSED RATE CHANGES

OCTOBER 3, 1955.

In the matters of Pan American Company, Docket No. G-8614; Phillips Petroleum Company, Docket No. G-8695.

Notice is hereby given that on September 22, 1955, the Federal Power Commission issued its orders adopted September 21, 1955, making effective proposed rate changes upon filing of undertaking to assure refund of excess charges in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8126; Filed, Oct. 6, 1955; 8:47 a. m.]

[Docket No. G-8993]

A. W. GREGG

NOTICE OF ORDER MAKING EFFECTIVE PROPOSED RATE CHANGES

OCTOBER 3, 1955.

Notice is hereby given that on September 22, 1955, the Federal Power Commission issued its order adopted September 21, 1955, making effective proposed rate changes upon filing of bond to assure refund of excess charges in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8127; Filed, Oct. 6, 1955; 8:47 a. m.]

[Docket No. G-9025]

TEXAS EASTERN TRANSMISSION CORP.

NOTICE OF FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

OCTOBER 3, 1955.

Notice is hereby given that on September 22, 1955, the Federal Power Commission issued its findings and order adopted September 21, 1955, issuing a certificate of public convenience and necessity in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-8128; Filed, Oct. 6, 1955; 8:47 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 4, 1955.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 31150: *Substituted rail service—Norfolk and Western and Pennsylvanian Railroads.* Filed by Middle Atlantic Conference, Agent, for Norfolk and Western Railway Company and Pennsylvania Railroad Company, and interested motor carriers. Rates on commodities, various, in highway trailers loaded on railroad flat cars between Roanoke, Va., and Bristol, Va.-Tenn., on the one hand, and Kearny, N. J., and Philadelphia, Pa., on the other.

Grounds for relief: "Trailer-on-flat-car" motor-truck competition.

Tariff: Middle Atlantic Conference tariff I. C. C. No. 2.

FSA No. 31151: *Substituted rail service—Pennsylvania Railroad.* Filed by Middle Atlantic Conference, Agent, for Pennsylvania Railroad Company and interested motor carriers. Rates on commodities, various, in highway trailers, loaded on railroad flat cars between Pittsburgh, Pa., and Kearny, N. J.

Grounds for relief: "Trailer-on-flat-car" motor-truck competition.

Tariff: Middle Atlantic Conference tariff I. C. C. No. 2.

FSA No. 31152: *Slate and stone between points in Southern Territory.* Filed by R. E. Boyle, Jr., Agent, for interested rail carriers. Rates on slate, paving, or flagging and stone, bridge, curbing, flagging, paving, etc., carloads between base points in southern territory and points grouped with such base points in the National Rate Basis tariff.

Grounds for relief: Short-line distance formula and circuity.

Tariff: Supplement 7 to Agent Spaninger's I. C. C. 1483.

FSA No. 31153: *Coal and coal briquettes to Holt, Ala.* Filed by R. E. Boyle, Jr., Agent, for interested rail carriers. Rates on coal and coal briquettes, carloads from specified points in West Virginia on C. & O. and Virginian Railways, to Holt, Ala.

Grounds for relief: Circuitous routes.

Tariff: Supplement 27 to C. & O. Ry. Co. I. C. C. No. 13007.

FSA No. 31154: *Clay from Wrens, Ga., to the South.* Filed by R. E. Boyle, Jr., Agent, for interested rail carriers. Rates on clay, kaolin or pyrophyllite, carloads from Wrens, Ga., to specified points in Georgia, Mississippi, and South Carolina.

Grounds for relief: Modified short-line distance formula and circuitous routes.

Tariff: Supplement 90 to Agent Spaninger's I. C. C. 1323.

FSA No. 31155: *Clay—Wrens, Ga., to Official Territory.* Filed by R. E. Boyle, Jr., Agent, for interested rail carriers. Rates on clay, kaolin, or pyrophyllite, carloads from Wrens, Ga., to specified points in Illinois, Indiana, Michigan, Missouri, Pennsylvania and Wisconsin.

Grounds for relief: Modified short-line distance formula and circuity.

Tariff: Supplement 90 to Agent Spaninger's I. C. C. 1323.

FSA No. 31156: *Liquefied petroleum gas—New York and Ohio to Central Territory.* Filed by H. R. Hinsch, Agent, for interested rail carriers. Rates on liquefied petroleum gas, tank-car loads from Buffalo and Harriet, N. Y., and Canton, Ohio to specified points in Kentucky, Michigan, New York, Ohio, Pennsylvania, and West Virginia.

Grounds for relief: Short-line distance formula, truck competition, and circuity.

Tariff: Supplement 88 to Agent Hinsch's I. C. C. 4446.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 55-8120; Filed, Oct. 6, 1955; 8:46 a. m.]

UNITED STATES TARIFF COMMISSION

[Investigation 5]

CAST IRON SOIL PIPE

NOTICE OF INVESTIGATION AND PUBLIC HEARING

The United States Tariff Commission announces a public hearing, to begin at 10 a. m. on October 21, 1955, in the Hearing Room of the Tariff Commission, Eighth and E Streets NW., Washington, D. C., in connection with Investigation No. 5 under section 201 (a) of the Antidumping Act, 1921, as amended, with respect to cast iron soil pipe, described in the public notice of this investigation previously given (20 F. R. 5667).

Request to appear at hearing: Parties interested will be given opportunity to appear and to be heard at the above-mentioned hearing. Such parties desiring to appear at the hearing should notify the Secretary of the Commission, in writing, in advance of the date of the hearing.

Issued: October 4, 1955.

By order of the United States Tariff Commission, the 4th day of October 1955.

[SEAL] DONN N. BENT,
Secretary.

[F. R. Doc. 55-8133; Filed, Oct. 6, 1955; 8:49 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 30-230]

WISCONSIN SOUTHERN GAS CO., INC.

NOTICE OF FILING OF APPLICATION FOR ORDER DECLARING IT HAS CEASED TO BE A HOLDING COMPANY

OCTOBER 3, 1955.

Notice is hereby given that Wisconsin Southern Gas Company, Inc., which on August 9, 1955, was granted an exemption as a holding company, pursuant to order of the Commission (Holding Company Act Release No. 12960) under section 3 (a) (1) of the Public Utility Holding Company Act of 1935 ("Act"), has filed an application with the Commission pursuant to Section 5 (d) of the Act, requesting an order declaring that it has ceased to be a holding company.

The application states that the applicant's only subsidiary company, Wisconsin Southern Gas Company, was merged into applicant on August 18, 1955, and has ceased to exist and that, accordingly, Wisconsin Southern Gas Company, Inc., has ceased to be a holding company.

Notice is further given that any interested person may, not later than October 18, 1955, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date the application, as filed or as amended, may be granted, or the Commission may take such other action as it deems appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 55-8119; Filed, Oct. 6, 1955; 8:45 a. m.]

[File No. 812-957]

SECURED UNDERWRITERS, INC.

NOTICE OF FILING OF APPLICATION FOR ORDER EXEMPTING CERTAIN TRANSACTIONS BETWEEN AFFILIATES

OCTOBER 3, 1955.

Notice is hereby given that Secured Underwriters, Inc. ("Underwriters"), a registered investment company, has filed an amended application pursuant to section 17 (b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of section 17 (a) of the Act certain transactions described below incident to a proposed offering of securities.

Such application, as amended, makes the following representations:

Underwriters holds in its portfolio 84,053 shares (7.31 percent) of the common stock of Secured Insurance Company ("Insurance") and 17,959 shares (5.97 percent) of the common stock of Secured Development Company ("Development"). Persons unaffiliated with Underwriters have expressed an interest in the block of stock of Insurance held by Underwriters but Underwriters proposes to give the security holders of Underwriters, Insurance, and Development who reside in Indiana the first opportunity to purchase such stock.

The offering price of such stock is $2.84 per share, payable (a) in full upon demand, or (b) $0.84 in cash upon demand, $1.00 within four months after the date of said demand, and the balance of $1.00 within eight months after said demand, with interest at 4 percent per annum upon the deferred portions from the date of demand to the date of payment.

The offering is extended only to persons who are bona fide residents of the State of Indiana and who are not purchasing for resale to nonresidents of the State of Indiana.

In the event Underwriters does not receive offers to purchase all the 84,053 shares of Insurance, Underwriters reserves the right to decline all offers to purchase. In the event Underwriters receives offers to purchase aggregating more than the 84,053 shares, each offer to purchase will constitute an offer to purchase that proportion of the number of shares stated therein which corresponds to the ratio of 84,053 to the aggregate shares stated in all such offers to purchase.

The offering price represents approximately the sum of the capital, surplus, and 35 percent of the unearned premium reserve of Insurance applicable to each share of its stock. Such price is represented to be the fair value of the shares being offered.

Section 17 (a) of the act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to or purchasing from such registered investment company or any company controlled by such registered investment company, any security or other property, subject to certain exceptions, unless the Commission upon application pursuant to section 17 (b) grants an exemption from the provisions of section 17 (a), after finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the act, and is consistent with the general purposes of the act.

Since certain of the offerees are affiliated persons of Underwriters, certain of the proposed transactions are subject to the provisions of Section 17 (a) of the act. The application requests an order under Section 17 (b) exempting these transactions.

Notice is further given that any interested person may, not later than October 24, 1955, at 5:30 p. m., submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the Rules and Regulations promulgated under the Act.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 55-8118; Filed, Oct. 6, 1955; 8:45 a. m.]